Montana Legislative History

Chapter: 502 Session L: 2007

Bill Number: 153 Senate

Checklist of Bill History

History and Final Status Sheet	x
Introduced Bill	X
Fiscal Note	X
Third Reading Bill	X
Final Version of Bill	X

House

Committee:
Business and Labor

Hearing Date(s):
March 16, 2007
March 28, 2007

Senate

Committee:
Business, Labor and Economic Affairs

Hearing Date(s):
January 18, 2007
February 1, 2007 (Executive Action)

Conference Committee

Hearing Date(s): n/a

Conference Committee Report:

Compiler Notes

Compiled by:

Date:

Notes:

(4) An out-of-state brewery or winery that violates the provisions of this section is subject to the penalties provided for in 16-6-302."

Section 11. Section 16-6-104, MCA, is amended to read:

"16-6-104. Unlawful alcoholic beverage — seizure — forfeiture. (1) Any investigator or peace officer who finds an alcoholic beverage ~~which he~~ *and who* has reasonable cause to believe ~~is had~~ *that the alcoholic beverage was obtained* or kept by any person in violation of the provisions of this code may ~~forthwith~~ seize and remove the ~~same~~ *alcoholic beverage* and the packages in which the alcoholic beverage is kept, and upon conviction of the person, the alcoholic beverage and all packages containing the ~~same shall~~ *alcoholic beverages are*, in addition to any other penalty prescribed by this code, ~~ipso facto be~~ forfeited to the state of Montana.

(2) Any beer *or wine* ~~which~~ *that* has been shipped into Montana ~~and has not been shipped to and distributed from a warehouse of a licensed wholesaler~~ *in violation of this code* ~~shall~~ *must* be seized by any peace officer or representative of the department and may be confiscated in the manner as provided for the confiscation of alcoholic beverages."

Section 12. Section 16-6-314, MCA, is amended to read:

"16-6-314. Penalty for violating code — revocation of license — penalty for violation by underage person. (1) A person who violates a provision of this code is guilty of a misdemeanor punishable as provided in 46-18-212, except as otherwise provided in this section.

(2) If a retail licensee is convicted of an offense under this code, the licensee's license must be immediately revoked or, in the discretion of the department, ~~such other~~ *another* sanction *must be* imposed as ~~may be authorized~~ *provided* under 16-4-406.

(3) A person under 21 years of age who violates ~~16-3-301(4)~~ *16-3-301(5)* or 16-6-305(3) is subject to the penalty provided in 45-5-624(2) or (3). (See compiler's comments for contingent termination of certain text.)"

Approved May 16, 2007

CHAPTER NO. 502

[SB 153]

AN ACT REVISING PROFESSIONAL AND OCCUPATIONAL LICENSING LAWS; CREATING EMERITUS STATUS FOR ARCHITECTS; CREATING A RETIREMENT LICENSE FOR PLUMBERS; REVISING THE BOARD OF REALTY REGULATION; REVISING THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; CLARIFYING THE DEFINITION OF "LICENSE"; PROVIDING BOARDS WITH PERMISSION TO REQUIRE STATE, REGIONAL, OR NATIONAL CERTIFICATION; EXPANDING THE UNPROFESSIONAL CONDUCT DESCRIPTION; ADDING ELEVATOR CONTRACTORS, MECHANICS, AND INSPECTORS TO THOSE COVERED BY THE UNPROFESSIONAL CONDUCT STATUTE; ADDING NATUROPATHIC PHYSICIAN, PHYSICIAN ASSISTANT, AND OPTOMETRIST TO DEFINITIONS RELATING TO NURSING; REMOVING THE OATH REQUIREMENT TO APPLY FOR A LICENSE AS A NURSE; CLARIFYING APPLICATION REQUIREMENTS FOR OPTOMETRISTS; CLARIFYING THE APPLICATION PROCESS FOR SPEECH-LANGUAGE

PATHOLOGISTS AND AUDIOLOGISTS; CLARIFYING TRAINEE LICENSE TERMS FOR HEARING AID DISPENSERS; REVISING TERMS FOR A VETERINARY LICENSE; REVISING RULEMAKING AUTHORITY FOR THE BOARD OF ALTERNATIVE HEALTH CARE; CLARIFYING LICENSING PROCEDURE FOR NATUROPATHIC PHYSICIANS; REVISING DISTRIBUTION OF CERTAIN LICENSEE FEES FOR OUTFITTERS; CLARIFYING CONDITIONS FOR DENYING, SUSPENDING, OR REVOKING AN OUTFITTER'S, GUIDE'S, OR PROFESSIONAL GUIDE'S LICENSE; REQUIRING PUBLICATION OF A LIST OF LICENSED OUTFITTERS; PROVIDING PENALTIES FOR NONCOMPLIANCE BY REAL ESTATE BROKERS OR PROPERTY MANAGERS WITH TRUST ACCOUNT PROVISIONS; CREATING ENDORSEMENT PROVISIONS FOR A SUPERVISING REAL ESTATE BROKER; CREATING A TEMPORARY LICENSE FOR ELEVATOR INSPECTORS; REVISING THE NAME OF AMBULATORY SURGICAL FACILITIES; PROVIDING ACUPUNCTURISTS WITH LIEN RIGHTS; AMENDING SECTIONS 2-15-1757, 2-15-1781, 25-1-1104, 33-36-103, 37-1-130, 37-1-131, 37-1-302, 37-1-401, 37-1-410, 37-8-102, 37-8-405, 37-8-415, 37-10-302, 37-15-302, 37-16-405, 37-18-306, 37-26-201, 37-26-403, 37-47-318, 37-47-341, 37-51-102, 37-51-301, 37-51-302, 37-60-101, 37-60-103, 37-60-202, 37-60-301, 37-60-302, 37-60-303, 37-60-304, 37-60-309, 37-60-310, 37-60-314, 37-60-402, 37-60-403, 37-60-409, 37-73-208, 50-32-314, 71-3-1111, 71-3-1112, 71-3-1113, 71-3-1114, 71-3-1115, 71-3-1117, AND 71-3-1118, MCA; AND REPEALING SECTIONS 37-60-315 AND 37-60-406, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Emeritus status. (1) A licensee who no longer practices architecture may apply to the department for emeritus status.

(2) Upon receiving an application for emeritus status accompanied by the fee established by the board, the department shall issue a license of emeritus status to the applicant and record the applicant's name in the appropriate database as an emeritus licensee, along with the date on which the licensee received emeritus status.

(3) An emeritus licensee may retain but may not use the licensee's seal and may not practice architecture.

(4) The department shall reissue an active license to an emeritus licensee who pays all application fees, meets all current requirements for licensure, and demonstrates to the board's satisfaction that for the 2 years preceding the application for active licensure, the applicant has met requirements set by the board for maintaining professional competence.

Section 2. License of retirement status. (1) A licensee who no longer practices plumbing may apply to the department for retirement status.

(2) Upon receiving an application for retirement status accompanied by the fee established by the board, the department shall issue a license of retirement status to the applicant and record the applicant's name in the appropriate database as a holder of a license of retirement status, along with the date on which the licensee received retirement status.

(3) A license of retirement status does not allow a holder to practice plumbing under this chapter.

(4) The department shall reissue an active license to a holder of a license of retirement status who pays the appropriate active license renewal fee and meets any competency requirements established by rule by the department.

Section 3. Section 2-15-1757, MCA, is amended to read:

"2-15-1757. Board of realty regulation. (1) There is a board of realty regulation.

(2) The board consists of ~~five~~ *seven* members appointed by the governor with the consent of the senate. ~~Three~~ *Five* members must be licensed real estate brokers ~~or~~, salespeople, *or property managers* who are actively engaged in the real estate business as a broker ~~or~~, *a* salesperson, *or a property manager* in this state. Two members must be representatives of the public who are not state government officers or employees and who are not engaged in business as a real estate broker, ~~or~~ *a* salesperson, *or a property manager*. The members must be residents of this state.

(3) Not more than ~~three~~ *five* members, including the presiding officer, may be from the same political party.

(4) The members shall serve staggered terms of 4 years. A member may not serve more than two terms or any portion of two terms.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 2-15-1781, MCA, is amended to read:

"2-15-1781. Board of private security ~~patrol officers and investigators~~. (1) There is a board of private security ~~patrol officers and investigators~~.

(2) The board consists of seven voting members appointed by the governor with the consent of the senate. The members shall represent:

(a) one contract security company *or proprietary security organization*, as defined by 37-60-101;

(b) one ~~proprietary security organization~~ *electronic security company*, as defined by 37-60-101;

(c) one city police department;

(d) one county sheriff's office;

(e) one member of the public;

(f) one member of the peace officers' standards and training advisory council; and

(g) a licensed private investigator.

(3) Members of the board must be at least 25 years of age and have been residents of this state for more than 5 years.

(4) The appointed members of the board shall serve for a term of 3 years. The terms of board members must be staggered.

(5) The governor may remove a member for misconduct, incompetency, neglect of duty, or unprofessional or dishonorable conduct.

(6) A vacancy on the board must be filled in the same manner as the original appointment and may only be for the unexpired portion of the term.

(7) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 5. Section 25-1-1104, MCA, is amended to read:

"25-1-1104. Handbook for process servers. (1) The department of labor and industry shall publish a handbook for process servers and levying officers.

(2) Each person who applies to the clerk of the district court of any county for registration as a process server shall demonstrate that the person has passed an examination based on the handbook and administered by the board of private security ~~patrol officers and investigators~~ provided for in 2-15-1781.

(3) The department of labor and industry may charge a reasonable examination fee to cover the costs of publishing the handbook and administering the examination provided for in this section."

Section 6. Section 33-36-103, MCA, is amended to read:

"33-36-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Closed plan" means a managed care plan that requires covered persons to use only participating providers under the terms of the managed care plan.

(2) "Combination plan" means an open plan with a closed component.

(3) "Covered benefits" means those health care services to which a covered person is entitled under the terms of a health benefit plan.

(4) "Covered person" means a policyholder, subscriber, or enrollee or other individual participating in a health benefit plan.

(5) "Department" means the department of public health and human services established in 2-15-2201.

(6) "Emergency medical condition" means a condition manifesting itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in any of the following:

(a) the covered person's health would be in serious jeopardy;

(b) the covered person's bodily functions would be seriously impaired; or

(c) a bodily organ or part would be seriously damaged.

(7) "Emergency services" means health care items and services furnished or required to evaluate and treat an emergency medical condition.

(8) "Facility" means an institution providing health care services or a health care setting, including but not limited to a hospital, medical assistance facility, or critical access hospital, as defined in 50-5-101, or other licensed inpatient center, an ~~ambulatory surgical or treatment center~~ *outpatient center for surgical services, a treatment center*, a skilled nursing center, a residential treatment center, a diagnostic~~,~~ laboratory, ~~an~~ *a diagnostic* imaging center, or a rehabilitation or other therapeutic health setting.

(9) "Health benefit plan" means a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(10) "Health care professional" means a physician or other health care practitioner licensed, accredited, or certified pursuant to the laws of this state to perform specified health care services consistent with state law.

(11) "Health care provider" or "provider" means a health care professional or a facility.

(12) "Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

(13) "Health carrier" means an entity subject to the insurance laws and rules of this state that contracts, offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a disability insurer, health maintenance organization, or health service corporation or another entity providing a health benefit plan.

(14) "Intermediary" means a person authorized to negotiate, execute, and be a party to a contract between a health carrier and a provider or between a health carrier and a network.

(15) "Managed care plan" means a health benefit plan that either requires or creates incentives, including financial incentives, for a covered person to use health care providers managed, owned, under contract with, or employed by a health carrier, but not preferred provider organizations or other provider networks operated in a fee-for-service indemnity environment.

(16) "Medically necessary" means services, medicines, or supplies that are necessary and appropriate for the diagnosis or treatment of a covered person's illness, injury, or medical condition according to accepted standards of medical practice and that are not provided only as a convenience.

(17) "Network" means the group of participating providers that provides health care services to a managed care plan.

(18) "Open plan" means a managed care plan other than a closed plan that provides incentives, including financial incentives, for covered persons to use participating providers under the terms of the managed care plan.

(19) "Participating provider" means a provider who, under a contract with a health carrier or with the health carrier's contractor, subcontractor, or intermediary, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly from the health carrier.

(20) "Primary care professional" means a participating health care professional designated by the health carrier to supervise, coordinate, or provide initial care or continuing care to a covered person and who may be required by the health carrier to initiate a referral for specialty care and to maintain supervision of health care services rendered to the covered person.

(21) "Quality assessment" means the measurement and evaluation of the quality and outcomes of medical care provided to individuals, groups, or populations.

(22) "Quality assurance" means quality assessment and quality improvement.

(23) "Quality improvement" means an effort to improve the processes and outcomes related to the provision of health care services within a health plan."

Section 7. Section 37-1-130, MCA, is amended to read:

"37-1-130. Definitions. As used in this part, the following definitions apply:

(1) "Administrative fee" means a fee established by the department to cover the cost of administrative services as provided for in 37-1-134.

(2) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(3) "Board fee" means:

(a) a fee established by the board to cover program area costs as provided in 37-1-134; and

(b) any other legislatively prescribed fees specific to boards and department programs.

(4) "Department" means the department of labor and industry established in 2-15-1701.

(5) "Department program" means a program administered by the department pursuant to this title and not affiliated with a board.

(6) "Expired license" means a license that is not reactivated within the period of ~~45~~ *46* days to 2 years after the renewal date for the license.

(7) "Lapsed license" means a license that is not renewed by the renewal date and that may be reactivated within the first 45-day period after the renewal date for the license.

(8) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, *regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.*

(9) "Terminated license" means a license that is not renewed or reactivated within 2 years of the license lapsing."

Section 8. Section 37-1-131, MCA, is amended to read:

"37-1-131. Duties of boards — quorum required. *(1)* A quorum of each board within the department shall:

~~(1)~~*(a)* set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;

~~(2)~~*(b)* sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

~~(3)~~*(c)* suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection ~~(2)~~ *(1)(b)*, is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

~~(4)~~*(d)* pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

~~(5)~~*(e)* consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

~~(6)~~*(2)* A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(3) A board that requires continuing education or continued state, regional, or national certification for licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of this subsection for the renewal cycle.

~~(7)~~*(4)* The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure, as provided in 37-1-306, *or require continued state, regional, or national certification for licensure.* ~~If~~ *Except as provided in subsection (3), if* the board or department requires continuing education *or continued state, regional, or national certification* for continued licensure, the board or department may not audit or ~~verify~~ *require proof of* continuing education *or continued state, regional, or national certification* requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits *after the lapsed date* of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement ~~after the renewal period closes~~.

~~(8)~~*(5)* A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board."

Section 9. Section 37-1-302, MCA, is amended to read:

"37-1-302. Definitions. As used in this part, the following definitions apply:

(1) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3) "Department" means the department of labor and industry.

(4) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

(5) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the board;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether a board should seek an injunction.

(6) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, *regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.*

(7) "Profession" or "occupation" means a profession or occupation regulated by a board."

Section 10. Section 37-1-401, MCA, is amended to read:

"37-1-401. Uniform regulation for licensing programs without boards — definitions. As used in this part, the following definitions apply:

(1) "Complaint" means a written allegation filed with the department that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the department;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether the department should seek an injunction.

(4) "License" means permission in the form of a license, permit, endorsement, certificate, recognition, or registration granted by the state of Montana to engage in a business activity or practice at a specific level in a profession or occupation governed by:

(a) Title 37, chapter 35, 72, *73,* or 76; or

(b) Title 50, chapter 39, 74, or 76.

(5) "Profession" or "occupation" means a profession or occupation regulated by the department under the provisions of:

(a) Title 37, chapter 35, 72, *73,* or 76; or

(b) Title 50, chapter 39, 74, or 76."

Section 11. Section 37-1-410, MCA, is amended to read:

"37-1-410. Unprofessional conduct. *(1)* The following is unprofessional conduct for a licensee or license applicant *in a profession or occupation* governed by this chapter:

~~(1)~~*(a)* being convicted, including a conviction following a plea of nolo contendere and regardless of a pending appeal, of a crime relating to or committed during the course of practicing the person's profession or occupation or involving violence, the use or sale of drugs, fraud, deceit, or theft;

~~(2)~~*(b)* permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

~~(3)~~*(c) committing* fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

~~(4)~~*(d)* signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

~~(5)~~*(e)* making a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

~~(6)~~*(f)* offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

~~(7)~~*(g)* ~~the~~ *receiving a* denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal or under judicial review or has been satisfied.

~~(8)~~*(h)* ~~failure~~ *failing* to comply with a term, condition, or limitation of a license by final order of the department;

~~(9)~~*(i)* having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

~~(10)~~*(j)* misappropriating property or funds from a client or workplace or failing to comply with the department's rule regarding the accounting and distribution of a client's property or funds;

~~(11)~~*(k)* ~~interference~~ *interfering* with an investigation or disciplinary proceeding by willful misrepresentation of facts, failure to respond to department inquiries regarding a complaint against the licensee or license applicant, or the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action or use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

~~(12)~~*(l)* assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice the profession or occupation by use of the licensee's license.

(2) For the purposes of Title 37, chapters 72 and 73, and Title 50, chapters 74 and 76, the following additional practices are considered unprofessional conduct:

(a) addiction to or dependency on alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32;

(b) use of alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally;

(c) conduct that does not meet generally accepted standards of practice. A certified copy of a judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring within the scope of

practice and the course of the practice is considered conclusive evidence of, but is not needed to prove, conduct that does not meet generally accepted standards."

Section 12. Section 37-8-102, MCA, is amended to read:

"**37-8-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202.

(2) "Board" means the board of nursing provided for in 2-15-1734.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) "Medication aide" means a person who in an assisted living facility uses standardized procedures in the administration of drugs, as defined in 37-7-101, that are prescribed by a physician, an advanced practice registered nurse with prescriptive authority, a dentist, an osteopath, or a podiatrist authorized by state law to prescribe drugs.

(5) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a junior college, college, or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical institution or junior college.

(6) "Practice of nursing" embraces the practice of practical nursing and the practice of professional nursing.

(7) (a) "Practice of practical nursing" means the performance of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. The practice of practical nursing uses standardized procedures in the observation and care of the ill, injured, and infirm, in the maintenance of health, in action to safeguard life and health, and in the administration of medications and treatments prescribed by a physician, *naturopathic physician, physician assistant, optometrist,* advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, *naturopathic physician, physician assistant, optometrist,* dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(b) These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

(8) "Practice of professional nursing" means the performance of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health, the prevention, casefinding, and management of illness, injury, or infirmity, and the restoration of optimum function. The term also

includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, *naturopathic physicians, physician assistants, optometrist,* advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (8):

(a) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(b) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals."

Section 13. Section 37-8-405, MCA, is amended to read:

"37-8-405. Professional nursing — qualifications of applicants for license. An applicant for a license to practice as a registered professional nurse shall submit to the department written evidence~~, verified by oath,~~ that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) has completed the basic professional curriculum in an approved school of nursing and holds a diploma ~~therefrom~~ *from that school*; and

(3) meets other qualification requirements the board prescribes."

Section 14. Section 37-8-415, MCA, is amended to read:

"37-8-415. Licensed practical nursing — qualifications of applicants. An applicant for a license to practice as a licensed practical nurse shall submit to the board written evidence~~, verified by oath,~~ that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) is a graduate of an approved practical nursing education program that is authorized to prepare persons for licensure as practical nurses; and

(3) meets other qualification requirements the board prescribes in its rules."

Section 15. Section 37-10-302, MCA, is amended to read:

"37-10-302. Qualifications — application. (1) The board shall adopt rules relative to and governing the qualifications of applicants for licensure as optometrists.

(2) A person is not eligible to receive a license unless that person is ~~18 years of age or older and~~ of good moral character.

(3) A person is not eligible to receive a license unless that person has graduated from an accredited ~~high school and from a~~ school of optometry in which the practice and science of optometry is taught in a course of study that is accredited by the international association of boards of examiners in optometry.

(4) ~~A person desiring~~ *An applicant for* a license shall file a completed application on a form provided by the department and pay a fee prescribed by the board."

Section 16. Section 37-15-302, MCA, is amended to read:

"**37-15-302. Application forms.** ~~Application~~ *An application* for examination for licensing a speech-language pathologist or audiologist ~~shall~~ *must* be made upon forms prescribed by the ~~board~~ *department*."

Section 17. Section 37-16-405, MCA, is amended to read:

"**37-16-405. Trainee license.** (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take a practical examination may apply to the board for a trainee license.

(2) On receiving an application under subsection (1), accompanied by a fee fixed by the board and verification that the applicant has passed the written portion of the examination with a passing score as determined by board rule, the board shall issue a trainee license that entitles the applicant to engage in a 180-day training period during which the applicant:

(a) is required to pass the practical examination administered by the board before being issued a hearing aid dispenser's license; and

(b) shall work under the direct supervision of the sponsoring licensed hearing aid dispenser. During this time the applicant may do the testing necessary for proper selection and fitting of hearing aids and related devices and make necessary impressions. However, the delivery and final fitting of the hearing aid and related devices must be made by the trainee and the supervisor.

(3) The training period must consist of a continuous 180-day term. Any break in training requires application for another trainee license under rules that the board may prescribe.

(4) A trainee license may not be issued unless the board has on file an unrevoked statement from a qualified licensed hearing aid dispenser accepting responsibility for the trainee. Every licensed hearing aid dispenser supervising a trainee license holder shall submit a report every 90 days of the trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible for all hearing aid fittings of the trainee. A supervisor may terminate any responsibilities to the trainee by mailing by certified mail written notice to the board and the trainee.

(5) If a person who holds a trainee license takes and fails to pass the practical examination ~~during the training period, the board may authorize the department to renew the trainee license for a period of 180 days, during which the provisions of subsection (2)(b) apply. More than one renewal is not permitted~~, *the trainee license expires, and the person may not practice as a trainee.*

(6) A person licensed as an audiologist under the provisions of Title 37, chapter 15, or a person practicing pursuant to 37-1-305 is exempt from the 180-day training period but is required to pass the examinations prescribed in this chapter.

(7) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee as if the conduct were the licensee's own.

(8) For the purposes of this section, "direct supervision" means the direct and regular observation and instruction of a trainee by a licensed hearing aid dispenser who is available at the same location for prompt consultation and treatment."

Section 18. Section 37-18-306, MCA, is amended to read:

"37-18-306. Display of license and certificate. A person may not practice veterinary medicine in this state without possessing and displaying prominently in ~~his~~ *the person's* principal office ~~a license and~~ a current and valid ~~certificate of registration~~ *license* issued under this part."

Section 19. Section 37-26-201, MCA, is amended to read:

"37-26-201. Powers and duties of board. The board shall:

(1) adopt rules necessary or proper to administer and enforce this chapter;

(2) adopt rules that specify the scope of practice of naturopathic medicine stated in 37-26-301, that are consistent with the definition of naturopathic medicine provided in 37-26-103, and that are consistent with the education provided by approved naturopathic medical colleges;

(3) adopt rules that endorse equivalent licensure examinations of another state or territory of the United States, the District of Columbia, or a foreign country and that may include licensure by reciprocity;

(4) adopt rules that set nonrefundable fees for application, and licensure;

(5) approve naturopathic medical colleges as defined in 37-26-103;

(6) issue certificates of specialty practice;

(7) adopt rules that, in the discretion of the board, appropriately restrict licenses to a limited scope of practice of naturopathic medicine, which may exclude the use of minor surgery allowed under 37-26-301; *and*

(8) adopt rules that contain the natural substance formulary list created by the alternative health care formulary committee provided for in 37-26-301~~; and~~

~~(9) adopt rules to implement the provisions in 37-1-138~~."

Section 20. Section 37-26-403, MCA, is amended to read:

"37-26-403. Application for licensure ~~— examination — temporary license~~. (1) A person who desires a license to practice naturopathic medicine in Montana shall apply to the department.

(2) The application must be accompanied by the license fees, the application fees, and the documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by 37-26-402. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the necessary qualifications and whether the applicant has committed unprofessional conduct that would be a basis for licensure denial.

(3) At the board's request, the applicant shall provide necessary authorizations for the release of records and information pertinent to the department's investigation.

~~(2) A person who applies for licensure but who has not passed a licensure examination prescribed or endorsed by the board shall apply to the board for authorization to take the prescribed licensure examination. If the board finds that all other qualifications for licensure except that of examination have been met, the board shall authorize the applicant to take the licensure examination.~~"

Section 21. Section 37-47-318, MCA, is amended to read:

"37-47-318. Fees in addition to annual license fee — allocation. (1) In addition to the fees required in 37-47-306 for an outfitter providing hunting services, the following fees apply:

(a) An outfitter shall pay an annual fee of $2 for each client served.

(b) An outfitter who is granted a net client hunter use expansion shall pay a fee of $500 for each new client added to that outfitter's operations plan.

(c) *(i)* An outfitter who operates hunting camps in more than one department of fish, wildlife, and parks administrative region shall pay an annual fee of $5,000 for each camp that is located beyond a 100-mile radius of the outfitter's base of operations and that is in an administrative region other than the region containing the outfitter's base of operations.

(ii) A fee is not required for the following:

~~(i)~~*(A)* an outfitter's base of operations camp;

~~(ii)~~*(B)* camps established before January 1, 1999;

~~(iii)~~*(C)* camps established on public land when use is directly regulated by public land use policies; or

~~(iv)~~*(D)* camps on corporate timberlands where public access is not restricted.

(d) An outfitter who desires a net client hunter use expansion shall pay a nonrefundable fee of $2,000 for each expansion request.

(2) Fees collected pursuant to this section must be expended by the board, pursuant to the authority in 37-47-306, and by the department of fish, wildlife, and parks, pursuant to the authority in 87-1-601, and used to fund administrative costs related to implementation of this chapter. The fees collected must be allocated as follows:

(a) Revenue generated by the $2 fee imposed in subsection (1)(a), *the $500 fee imposed in subsection (1)(b), and the $2,000 fee imposed in subsection (1)(d)* must be split equally between the board and the department of fish, wildlife, and parks.

~~(b) Revenue generated by the $500 fee imposed in subsection (1)(b) must be allocated between the board and the department of fish, wildlife, and parks in the following order:~~

~~(i) the amount necessary to cover the department's administrative expenses that exceed the revenue generated by subsection (2)(a); and~~

~~(ii) the remaining amount to be deposited in the state special revenue fund to the credit of the board.~~

~~(c)~~*(b)* Revenue generated by the $5,000 fee imposed in subsection (1)(c) must be deposited in the state special revenue fund to the credit of the board.

~~(d) Revenue generated by the $2,000 fee imposed in subsection (1)(d) must be split equally between the board and the department of fish, wildlife, and parks.~~"

Section 22. Section 37-47-341, MCA, is amended to read:

"37-47-341. Grounds for denial, suspension, or revocation of license. A license or right to apply for and hold a license issued under this part may be denied, suspended, or revoked or other disciplinary conditions may be applied upon any of the following grounds:

(1) having ceased to meet all of the qualifications for holding a license, as required under this chapter and rules adopted pursuant to this chapter;

(2) fraud or deception in procuring a license;

(3) fraudulent, untruthful, or misleading advertising;

(4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law. ~~A person may not apply for or hold an outfitter's, guide's, or professional guide's license during any period of time in which a sentence for a felony has been deferred or suspended.~~

(5) one conviction or bond forfeiture as to a violation of the fish and game or outfitting laws or regulations of any state or the United States;

(6) a substantial breach of a contract with a participant provided that the breach is established as a matter of final judgment in a court of law;

(7) the willful employment of or contracting with an unlicensed guide or professional guide by an outfitter;

(8) negligence or misconduct while acting as an outfitter, guide, or professional guide that causes an accident or injury to the person or property of a participant;

(9) misconduct as defined by board rule; or

(10) any violation of this chapter or a rule adopted pursuant to this chapter."

Section 23. Publication of license information. (1) The department shall prepare and publish an information pamphlet that contains the names and addresses of all licensed outfitters.

(2) The pamphlet described in subsection (1) must be available for free distribution as early as possible each calendar year but not later than the second Friday in March of each year.

(3) The pamphlet must contain the names, license numbers, and addresses of only those outfitters who have a currently valid license.

Section 24. Penalty for failure to comply with trust account requirements. (1) An employee of the department may issue a citation to a broker or property manager responsible for maintenance of a trust account for failure to comply with trust account maintenance requirements as provided by rule under 37-1-319(4).

(2) The citation must include:

(a) the time and date on which the citation is issued;

(b) the name, title, mailing address, and signature of the person issuing the citation;

(c) reference to the statute or rule violated;

(d) the name, title, and mailing address of the person to whom the citation is being sent, along with information explaining the procedure for the person receiving the citation to follow to pay the fine or dispute the violation; and

(e) the amount of the applicable fine.

(3) The applicable civil fine for failure to comply with trust account maintenance requirements is $50 for each cited violation.

(4) The person who issues the citation is authorized to collect the fine and deposit the proceeds in the state special revenue account to the credit of the board.

(5) The person who is issued a citation may pay the fine or file a written dispute of the violation with the board within 5 business days of the date of issuance.

(6) A person who refuses to sign and accept a citation but who does not file a written dispute of the violation is demonstrating unprofessional conduct.

Section 25. Section 37-51-102, MCA, is amended to read:

"37-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.

(3) "Board" means the board of realty regulation provided for in 2-15-1757.

(4) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson the name of a prospective buyer or seller of real property; or

(g) advertises or represents to the public that the individual is engaged in any of the activities referred to in subsections (4)(a) through (4)(f).

(5) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who has entered into an agreement to acquire an

interest in real property. The term includes tenants or potential tenants with respect to leases or rental agreements of real property.

(6) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

(7) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

(8) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a buyer.

(9) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(10) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written authorization, as provided in 37-51-314. An in-house buyer or seller agent designate may not be considered a dual agent.

(11) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(12) "In-house buyer agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for other than the buyer with respect to the designated transaction.

(13) "In-house seller agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a seller for a designated transaction and who may not be considered to be acting for other than the seller with respect to the designated transaction.

(14) "Listing agreement" means a written agreement between a seller and broker for the sale of real estate, with the terms and conditions set out in the agreement.

(15) "Negotiations" means:

(a) efforts to act as an intermediary between parties to a real estate transaction;

(b) facilitating and participating in contract discussions;

(c) completing forms for offers, counteroffers, addendums, and other writings; and

(d) presenting offers and counteroffers.

(16) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(17) "Property manager" includes a person who for a salary, commission, or compensation of any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602.

(18) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(19) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale, exchange, or lease of an interest in real estate and includes all communication, interposition, advisement, negotiation, and contract development and closing.

(20) "Salesperson" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(21) "Seller" means a person who has entered into a listing agreement to sell real estate and includes landlords who have an interest in or are a party to a lease or rental agreement.

(22) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

(23) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

(24) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in this chapter, a relationship other than that of a statutory broker.

(25) "Supervising broker" means a licensed broker with whom a licensed salesperson is associated, either directly, indirectly, regularly, or occasionally, to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(26) "Supervising broker endorsement" means an endorsement to a broker license that is required of any licensed broker who supervises licensed salespersons performing real estate activity."

Section 26. Section 37-51-301, MCA, is amended to read:

"37-51-301. License required — limited to persons. (1) It is unlawful for a person to engage in or conduct, directly or indirectly, or to advertise or ~~hold himself out~~ *represent to the public* as engaging in or conducting the business or acting in the capacity of a real estate broker or a real estate salesperson within this state without a license as a broker or salesperson or otherwise complying with this chapter.

(2) It is unlawful for a person to supervise licensed salespersons or to act in the capacity of a supervising broker unless the person has a valid and active Montana broker license and a supervising broker endorsement.

~~(2)~~*(3)* Corporations, partnerships, and associations may not be licensed under this chapter. A corporation or a partnership may act as a licensee if every corporate officer and every partner performing the functions of a licensee is licensed under this chapter. All officers of a corporation or all members of a partnership acting as a licensee are in violation of this chapter unless there is full compliance with this subsection."

Section 27. Section 37-51-302, MCA, is amended to read:

"37-51-302. Broker or salesperson license — qualifications of applicant — *supervising broker endorsement.* (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesperson in a manner ~~as to safeguard~~ *that safeguards* the interests of the public.

(2) An applicant for a broker's license:

(a) must be at least 18 years of age;

(b) must have graduated from an accredited high school or completed an equivalent education as determined by the board;

(c) must have been actively engaged as a licensed real estate salesperson for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesperson ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesperson because of conditions existing in the area where the applicant resides, the board may waive this experience requirement;

(d) shall file an application for a license with the department; and

(e) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours, in addition to those required to secure a salesperson's license, in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law, real estate finance, and related topics.

(3) The board shall require information it considers necessary from an applicant to determine honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesperson's license:

(i) must be at least 18 years of age;

(ii) must have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board;

(iii) shall file an application for a license with the department; and

(iv) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

(b) The application must be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect.

(5) The department shall issue to each licensed broker and to each licensed salesperson a license and a pocket card in a form and size that the board prescribes.

(6) (a) An applicant for a supervising broker endorsement shall meet the education and experience requirements established by the board by rule except that:

(i) any broker licensed prior to October 1, 2007, is entitled to a supervising broker endorsement provided that the broker indicates on the broker's license renewal form for the 2008 calendar year the broker's intention to obtain the endorsement;

(ii) a broker who obtains a supervising broker endorsement pursuant to subsection (6)(a)(i) is subject to the endorsement renewal requirements adopted by the board by rule in order to supervise one or more licensed salespersons;

(iii) continuing education requirements for a supervising broker endorsement may not be in addition to the continuing education requirements for a licensed broker with respect to the total number of hours or credits required.

(b) The board may not assess a licensing fee for obtaining or renewing a supervising broker endorsement."

Section 28. Section 37-60-101, MCA, is amended to read:

"**37-60-101. Definitions.** As used in this chapter, the following definitions apply:

(1) "Alarm response runner" means ~~any~~ *an* individual employed by *an electronic security company,* a contract security company, or a proprietary security organization to respond to security alarm system signals.

(2) "Armed" means an individual who at any time wears, carries, or possesses a firearm in the performance of professional duties.

~~(2)~~*(3)* "Armed carrier service" means any person *or security company* who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

~~(3)~~*(4)* "Armed private investigator" means a private investigator who at any time wears, carries, *or* possesses~~, or has access to~~ a firearm in the performance of the individual's duties.

~~(4)~~*(5)* "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, *or* carrier service guard~~, or alarm response runner~~ and who at any time wears or carries a firearm in the performance of the individual's duties.

~~(5)~~*(6)* "Armored car service" means any person *or security company* who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

~~(6)~~*(7)* "Board" means the board of private security ~~patrol officers and investigators~~ provided for in 2-15-1781.

~~(7)~~*(8)* "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.

~~(8)~~*(9)* "Contract security company" means any person who ~~installs or maintains a security alarm system,~~ undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.

~~(9)~~*(10)* "Department" means the department of labor and industry provided for in 2-15-1701.

(11) (a) "Electronic security company" means a person who installs, services, or maintains a security alarm system and who undertakes to hire, employ, and provide alarm response runners and security alarm installers on a contractual basis to another person who does not exercise direction and control over the performance of the services rendered.

(b) The term does not include a person whose primary business is that of a locksmith and who may also install closed circuit television cameras and battery-operated door devices.

(12) (a) "Fire investigator" means a person other than an individual identified in subsection (12)(b) who for any consideration:

(i) makes or agrees to make an investigation with reference to:

(A) a fire to identify evidence and determine cause of the fire; or

(B) accidents involving suspected negligence or arson for criminal or civil action;

(ii) testifies as an expert witness for investigations identified under this subsection (12); or

(iii) cooperates with law enforcement agencies in conducting fire investigations and collecting evidence relating to fires.

(b) The term does not mean an insurance adjuster, an individual designated as the state fire marshal under 2-15-2005, or a member of:

(i) a fire department as described in 7-3-1345;

(ii) law enforcement; or

(iii) an entity organized under Title 7, chapter 33.

(13) "Firearms course" means the course approved by the board and conducted by a firearms instructor.

(14) "Firearms instructor" means an individual who has been approved by the board to instruct firearms courses in the use of weapons.

~~(10)~~*(15)* "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration ~~whatsoever~~ conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes ~~or wrongs committed or threatened~~ against the United States or any state or territory of the United States.

~~(11)~~*(16)* "Licensee" means a person licensed under this chapter.

~~(12)~~*(17)* "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work.

~~(13)~~*(18)* "Person" ~~includes any~~ *means an* individual, firm, company, association, organization, partnership, ~~and~~ *or* corporation.

~~(14)~~*(19)* "Private investigator" means a person other than an insurance adjuster who for any consideration ~~whatsoever~~ makes or agrees to make any investigation with reference to:

(a) crimes ~~or wrongs done or threatened~~ against the United States or any state or territory of the United States;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, ~~whereabouts~~ *location*, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for ~~fires,~~ libels, losses, accidents, or injury to persons or property; or

(e) ~~securing~~ *gathering* evidence to be used before any court, board, officer, or investigating committee.

~~(15)~~*(20)* "Private security guard" means an individual employed or assigned duties to protect a person or property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property or the direction of the movements of the public in public areas.

~~(16)~~*(21)* "Proprietary security organization" means any person who employs a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

~~(17) "Qualifying agent" means, in the case of a corporation, a corporate employee employed in a management capacity or, in the case of a partnership, a general or unlimited partner meeting the qualifications set forth in this chapter for the operation of a contract security company, proprietary security organization, or private investigator, whichever is applicable.~~

~~(18)~~*(22)* "Resident manager" means the person appointed to exercise direct supervision, control, charge, management, or operation of each branch office located in this state where the business of the licensee is conducted.

(23) (a) "Security alarm installer" means an individual who installs, services, or maintains security alarm systems to detect and signal unauthorized intrusion, movement, break-in, or criminal acts and is employed by an electronic security company.

(b) The term does not include a person whose primary business is that of a locksmith and who may also install closed circuit television cameras and battery-operated door devices.

~~(19)~~*(24)* (a) "Security alarm system" means an assembly of equipment and devices or a single device~~, such as a solid state unit that plugs directly into a 110-volt AC line, designed~~ *or a portion of a system intended* to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a ~~protected premises and to which signals police, private security guards, or alarm response runners are expected to respond~~ *location*.

(b) The term does not include ~~alarm systems and alarm~~ systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a ~~premises~~ *location*.

(25) "Security company" means an electronic security company, a proprietary security organization, or a contract security company.

~~(20)~~*(26)* "Street patrol service" means ~~any contract security company or proprietary security organization that uses foot patrols, motor vehicles, or any other means of transportation to maintain public order or detect criminal activities in public areas or thoroughfares~~ *a person providing patrols by means of foot, vehicle, or other method of transportation using public street, thoroughfares, or property in the performance of the person's duties and responsibilities.*

~~(21)~~*(27)* "Unarmed private investigator" means a private investigator who does not wear, carry, *or* possess~~, or have access to~~ a firearm in the performance of the individual's duties.

~~(22)~~*(28)* "Unarmed private security guard" means an individual who is employed by a contract security company or a proprietary security organization, whose duty or any portion of whose duty is that of a private security guard, armored car service guard, or alarm response runner, and who does not wear ~~or~~, carry, *or possess* a firearm in the performance of those duties."

Section 29. Section 37-60-103, MCA, is amended to read:

"37-60-103. Purpose. The purpose of this chapter is to increase the levels of integrity, competency, and performance of ~~private~~ security ~~personnel~~ *companies and their employees who are required to be licensed, firearms instructors, fire investigators,* and private investigators ~~in order~~ to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by ~~private~~ security ~~personnel~~ *companies and their licensed employees, firearms instructors, fire investigators,* or private investigators."

Section 30. Section 37-60-202, MCA, is amended to read:

"37-60-202. Rulemaking power. The board shall adopt and enforce rules:

(1) fixing the qualifications of resident managers, ~~qualifying agents,~~ licensees, and holders of identification cards, in addition to those prescribed in this chapter, necessary to promote and protect the public welfare;

(2) establishing, in accordance with 37-1-134, application fees for original ~~or renewal~~ licenses and identification cards, and providing for refunding of any fees;

(3) (a) ~~prohibiting~~ *requiring approval of the board prior to* the establishment of branch offices of any licensee~~, except a proprietary security organization, without approval by the board~~; and

(b) establishing qualification requirements and license fees for branch offices identified in subsection (3)(a);

(4) for the certification of private investigator ~~and~~, private security guard, *security alarm installer, and alarm response runner* training programs, including the certification of firearms training programs;

(5) for the licensure of firearms instructors;

(6) for the approval of weapons;

(7) requiring the maintenance of records;

(8) requiring licensees to file an insurance policy with the board; and

(9) providing for the issuance of probationary identification cards for private investigators *and security alarm installers* who do not meet the requirements for age, employment experience, ~~and~~ *or* written examination."

Section 31. Section 37-60-301, MCA, is amended to read:

"37-60-301. License required. (1) Except as provided in 37-60-105 ~~and 37-60-315~~, it is unlawful for any person to act as or perform the duties, as defined in 37-60-101, of a contract security company ~~or~~, *a* proprietary security organization, *an electronic security company, a branch office,* a private investigator, *a fire investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor,* or a private security guard without having first obtained a license from the board. ~~Those persons licensed on April 18, 1983, shall retain their current licensure status and shall renew their licenses on the renewal date as prescribed by the department.~~

(2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that the person is licensed as ~~a private investigator,~~ a contract security company, a proprietary security organization, *an electronic security company, a branch office, a private investigator, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor,* or a private security guard.

(3) A person appointed by the court as a confidential intermediary under 42-6-104 is not required to be licensed under this chapter. A person who is licensed under this chapter is not authorized to act as a confidential intermediary, as defined in 42-1-103, without meeting the requirements of 42-6-104.

(4) A person who knowingly engages an unlicensed ~~private investigator, private security guard, or~~ contract security company, *proprietary security organization, electronic security company, branch office, private investigator, fire investigator, security alarm installer, alarm response runner, resident manager, certified firearms instructor, or private security guard* is guilty of a misdemeanor punishable under 37-60-411."

Section 32. Section 37-60-302, MCA, is amended to read:

"37-60-302. ~~Qualifying agent and resident~~ *Resident* manager required ~~— substitution~~. (1) Any ~~out-of-state~~ contract security company, *electronic security company,* or proprietary security organization that applies for a license under this chapter shall~~, before application to the board,~~ appoint for the duration of the license ~~a qualifying agent and~~ a resident manager. ~~Every~~

~~qualifying agent and~~ *Each* resident manager shall satisfy the appropriate licensing requirements of this chapter.

(2) A *separate* resident manager must be appointed for each branch office located in this state, and the business of the applicant or licensee must be conducted under the resident manager's direct supervision and control.

(3) If a ~~qualifying agent or~~ resident manager for any reason ceases to perform the duties of a ~~qualifying agent or~~ resident manager on a regular basis, the licensee shall promptly notify the board of that fact ~~and of the name of a substitute individual, who shall apply to the board for continuation of the license. Pending application by and board action upon the application of the substitute, the board may suspend the license or extend it for a reasonable time~~."

Section 33. Section 37-60-303, MCA, is amended to read:

"37-60-303. License qualifications. (1) Except as provided in subsection (7)*(a)*, an applicant for licensure under this chapter is subject to the provisions of this section and shall submit evidence under oath that the applicant:

(a) is at least 18 years of age;

(b) is a citizen of the United States *or a legal, permanent resident of the United States*;

(c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

(d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;

(e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;

(f) is of good moral character; and

(g) has complied with other experience qualifications as may be set by the rules of the board.

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard, *security alarm installer, or alarm response runner* shall:

(a) complete the ~~training~~ requirements of a ~~private security guard~~ training program certified by the board and provide, on a form prescribed by the board, written notice of satisfactory completion of the training; and

(b) fulfill other requirements as the board may by rule prescribe.

(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that the applicant:

(a) is at least 21 years of age;

(b) has at least a high school education or the equivalent;

(c) has not been dishonorably discharged from any branch of the United States military service; and

(d) has fulfilled any other requirements as the board may by rule prescribe.

(4) The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.

(5) An applicant who will wear, ~~or~~ carry, *or possess* a firearm in performance of the applicant's duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as the board may by rule prescribe.

(6) Except for an applicant subject to the provisions of subsection (7)*(a)*, the board shall require a background investigation of each applicant for licensure under this chapter that includes a fingerprint check by the Montana department of justice and the federal bureau of investigation.

(7) (a) A firm, company, association, partnership, limited liability company, corporation, or other entity that intends to engage in business governed by the provisions of this chapter must be incorporated under the laws of this state or qualified to do business within this state and must be licensed by the board.

(b) Individual employees, officers, directors, agents, or other representatives of an entity described in subsection (7)(a) who engage in duties that are subject to the provisions of this part must be licensed pursuant to the requirements of this part."

Section 34. Section 37-60-304, MCA, is amended to read:

"37-60-304. Licenses — application form and content. (1) ~~Except as provided in 37-60-303(7), an~~ *An* application for a license must be submitted to the department and accompanied by the application fee set by the board.

(2) An application must be made under oath and must include:

(a) the full name and address of the applicant;

(b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, *an electronic security company, a branch office, a certified firearms instructor,* a private investigator, *a fire investigator, a security alarm installer, an alarm response runner, a resident manager,* or a private security guard;

(e) *except for an applicant pursuant to 37-60-303(7)(a),* one recent photograph of the applicant, of a type prescribed by the department, and one classifiable set of the applicant's fingerprints;

(f) a statement of the applicant's age and experience qualifications, *except for an applicant pursuant to 37-60-303(7)(a)*; and

(g) other information, evidence, statements, or documents as may be prescribed by the rules of the board.

(3) The board shall verify the statements in the application ~~and the applicant's moral character~~.

(4) The submittal of fingerprints is a prerequisite to the issuance of a license, *except under 37-60-303(7)(a),* by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation."

Section 35. Section 37-60-309, MCA, is amended to read:

"37-60-309. Form of license and identification cards. The license~~,~~ *and* identification card~~, and temporary identification card for temporary security guards~~ must be in a form determined by the board."

Section 36. Section 37-60-310, MCA, is amended to read:

"37-60-310. Display of license and identification card. (1) A license must at all times be posted in a conspicuous place in the principal place of business of the licensee.

(2) A holder of an identification card ~~or a temporary identification card~~ shall carry the card while performing the cardholder's duties. A peace officer of this state or any of its political subdivisions may request to see the card at any reasonable time, and the card must be shown."

Section 37. Section 37-60-314, MCA, is amended to read:

"37-60-314. Nontransferability of license — record changes. (1) ~~No~~ *A* license issued under this chapter is *not* transferable.

(2) A licensee shall notify the board within 5 days of any change in its officers or directors, *name, address, employment,* or other material change in the information previously furnished or required to be furnished to the board or any other material change or occurrence that could reasonably be expected to affect the licensee's right to a license. Upon ~~such~~ *the* change or occurrence, the board may suspend or revoke the license or may allow the business to be carried on for a temporary period under terms and conditions as the board may require.

(3) This section may not be applied to restrict the sale of a business if the buyer qualifies for a license under the provisions of this chapter."

Section 38. Section 37-60-402, MCA, is amended to read:

"37-60-402. Confidentiality of information — false reports — badges and uniforms — illegal entry. (1) A licensee or officer, director, partner, or manager of a licensee may divulge to any law enforcement officer or county attorney or ~~his~~ representative *of the county attorney* any information ~~he~~ *that the licensee or officer, director, partner, or manager of a licensee* may acquire as to any criminal offense~~,~~ but ~~he~~ may not divulge to any other person, except as required by law, any information acquired ~~by him~~ except at the direction of the employer or client for whom the information was obtained.

(2) ~~No~~ *A* licensee or officer, director, partner, manager, or employee of a licensee may *not* knowingly make any false report to ~~his~~ *an* employer or client for whom information was being obtained.

(3) ~~No~~ *A* written report may *not* be submitted to a client except by the licensee~~, qualifying manager,~~ or a person authorized by ~~either of them~~ *the licensee,* and the person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in the report are true and correct.

(4) ~~No~~ *A* licensee or officer, director, partner, manager, or employee of a licensee may *not* use a title, wear a uniform, use an identification card, or make any statement with the intent to give an impression that ~~he~~ *the licensee or officer, director, partner, manager, or employee of a licensee* is connected in any way with the federal government, a state government, *a law enforcement agency,* or any political subdivision of a state government *unless the licensee has a contract with the agency.*

(5) ~~No~~ *A* licensee or officer, director, partner, manager, or employee of a licensee may *not* enter any private building or portion ~~thereof~~ *of a private building* without the consent of the owner or of the person in legal possession ~~thereof~~ *of the private building.*"

Section 39. Section 37-60-403, MCA, is amended to read:

"37-60-403. Licensee advertising. Every advertisement by a licensee soliciting or advertising business ~~shall~~ *must* contain ~~his~~ *the licensee's* name ~~and~~, address, *and license number* as they appear in the records of the board."

Section 40. Section 37-60-409, MCA, is amended to read:

"37-60-409. Installation of new security alarm systems by electrician. An electrician who has received a license from the department pursuant to 37-68-301 may install new security alarm systems under the direction of a ~~journeyman~~ *licensed* security alarm installer~~, but such work~~. *Work* performed by an electrician *under this section* is subject to inspection and approval by a security alarm installer licensed under 37-60-303."

Section 41. Section 37-73-208, MCA, is amended to read:

"37-73-208. Elevator inspector's license — *temporary license.* (1) A person intending to engage in work as an elevator inspector shall apply for a license as an elevator inspector on forms provided by the department.

(2) The department may not grant an applicant an elevator inspector's license unless the applicant demonstrates that the applicant meets the current national standards for the qualifications of elevator inspectors. The department shall designate by rule the national standards that must be met by an applicant.

(3) A newly hired elevator inspector who is not properly certified may conduct inspections for up to 6 months under a temporary license if the elevator inspector is supervised during the 6-month period of temporary licensure by appropriately certified personnel."

Section 42. Section 50-32-314, MCA, is amended to read:

"50-32-314. Board to adopt rules for registration of ~~ambulatory~~ *outpatient center for* surgical ~~facilities~~ *services.* (1) The board shall~~, by October 1, 1999,~~ adopt rules to provide for the registration of ~~ambulatory~~ *any outpatient center for* surgical ~~facilities~~ *services* pursuant to this part. The rules must categorize ~~ambulatory~~ *the outpatient center for* surgical ~~facilities~~ *services* as a "distributor" pursuant to 50-32-101(12) or other category of registrant as determined by the board.

(2) If the board determines that ~~ambulatory~~ *an outpatient center for* surgical ~~facilities require~~ *services requires* the services of a pharmacist in order to be registered, the board shall allow ~~those facilities~~ *that center* to use the services of a consulting pharmacist to satisfy the obligation imposed by the board.

(3) This section does not affect any existing *registration* requirement ~~that~~ *pursuant to this part for* persons providing dangerous drugs to an ~~ambulatory~~ *outpatient center for* surgical ~~facility~~ *services* or persons administering dangerous drugs within or as the result of procedures performed at an ~~ambulatory~~ *outpatient center for* surgical ~~facility be registered pursuant to this part~~ *services*."

Section 43. Section 71-3-1111, MCA, is amended to read:

"71-3-1111. Short title. This part may be cited as the "Physician, Nurse, Physical Therapist, Occupational Therapist, *Acupuncturist,* Chiropractor, Dentist, Psychologist, Licensed Social Worker, Licensed Professional Counselor, Hospital, and ~~Ambulatory~~ *Outpatient Center for* Surgical ~~Facility~~ *Services* Lien Act"."

Section 44. Section 71-3-1112, MCA, is amended to read:

"**71-3-1112. Purpose.** The purpose of this part is to establish lien rights for physicians, nurses, physical therapists, occupational therapists, *acupuncturists,* chiropractors, dentists, hospitals, and ~~ambulatory~~ *outpatient centers for* surgical ~~facilities~~ *services* for the value of services rendered and products provided for the diagnosis and treatment of medical conditions and to establish lien rights for psychologists, licensed social workers, and licensed professional counselors for services rendered and products provided when a person receiving treatment:

(1) is injured through the fault or neglect of another; or

(2) is either insured or a beneficiary under insurance."

Section 45. Section 71-3-1113, MCA, is amended to read:

"**71-3-1113. Definitions.** As used in this part, the following definitions apply:

~~(1) "Ambulatory surgical facility" means a facility registered as provided in 50-32-314.~~

~~(2)~~*(1)* "Beneficiary" means a person entitled to insurance benefits.

~~(3)~~*(2)* "Dentist" means a person practicing dentistry as provided in 37-4-101.

~~(4)~~*(3)* "Insurance" means a contract ~~whereby~~ *through which* a person, the insurer, undertakes to indemnify another, the insured, or pay or provide a determinable amount or benefit upon determinable contingencies.

~~(5)~~*(4)* "Insurer" includes a health service corporation.

(5) "Outpatient center for surgical services" means a facility registered as provided in 50-32-314.

(6) "Person" means an individual, a corporation, an organization, or other legal entity."

Section 46. Section 71-3-1114, MCA, is amended to read:

"**71-3-1114. Liens of physicians, nurses, physical therapists, occupational therapists, *acupuncturists,* chiropractors, dentists, hospitals, and ~~ambulatory~~ *outpatient center for* surgical ~~facilities~~ *services* and liens of psychologists, licensed social workers, and licensed professional counselors.** (1) (a) Upon the required notice of a lien being given, there is a lien as provided in subsection (1)(b) whenever:

(i) a physician, nurse, physical therapist, occupational therapist, *acupuncturist,* chiropractor, dentist, hospital, or ~~ambulatory~~ *outpatient center for* surgical ~~facility~~ *services* renders services or provides products for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor renders services or provides products; and

(iii) the services rendered or products provided under subsection (1)(a)(i) or (1)(a)(ii) are rendered or provided to a person injured through the fault or neglect of another.

(b) The physician, nurse, physical therapist, occupational therapist, *acupuncturist,* chiropractor, dentist, hospital, ~~ambulatory~~ *outpatient center for* surgical ~~facility~~ *services,* psychologist, licensed social worker, or licensed professional counselor has a lien for the value of services rendered or products provided on:

(i) any claim or cause of action that the injured person or the injured person's estate or successors may have for injury, disease, or death;

(ii) any judgment that the injured person or the estate or successors may obtain for injury, disease, or death; and

(iii) all money paid in satisfaction of the judgment or in settlement of the claim or cause of action.

(2) (a) If a person is an insured or a beneficiary under insurance that provides coverage in the event of injury or disease, there is a lien as provided in subsection (2)(b) upon required notice of a lien being given by:

(i) a physician, nurse, physical therapist, occupational therapist, *acupuncturist,* chiropractor, dentist, hospital, or ~~ambulatory~~ *outpatient center for* surgical ~~facility~~ *services* for the value of services rendered or products provided for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor for services rendered or products provided.

(b) The lien is on all proceeds or payments, except payments for property damage, payable by the insurer.

(3) A physician, nurse, physical therapist, occupational therapist, *acupuncturist,* chiropractor, dentist, hospital, ~~ambulatory~~ *outpatient center for* surgical ~~facility~~ *services*, psychologist, licensed social worker, or licensed professional counselor claiming a lien under this part is not liable for attorney fees and costs incurred by the injured person, the injured person's estate or successors, or a beneficiary in connection with obtaining payments or benefits subject to a lien under this part. The lien of an attorney provided for in 37-61-420 has priority over a lien created by this part."

Section 47. Section 71-3-1115, MCA, is amended to read:

"71-3-1115. Notice of lien. (1) A physician, nurse, physical therapist, occupational therapist, *acupuncturist,* chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ *outpatient center for* surgical ~~facility~~ *services* claiming a lien shall serve written notice upon the person and upon the insurer, if any, against whom liability for injury, disease, counseling service, or death is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed.

(2) A physician, nurse, physical therapist, occupational therapist, *acupuncturist,* chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ *outpatient center for* surgical ~~facility~~ *services* claiming a lien upon proceeds or payments payable by an insurer shall serve written notice upon the insurer against whom the lien is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed."

Section 48. Section 71-3-1117, MCA, is amended to read:

"71-3-1117. Liability for failure to recognize lien. If any insurer or person, after receiving notice of *a* lien, makes payment on account of injury, disease, counseling service, or death and the amount of the lien claimed by any physician, nurse, physical therapist, occupational therapist, *acupuncturist,* chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ *outpatient center for* surgical ~~facility~~ *services* has not been paid, the insurer or person is liable to the physician, nurse,

physical therapist, occupational therapist, *acupuncturist,* chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ *outpatient center for* surgical ~~facility~~ *services* for the reasonable value of the services."

Section 49. Section 71-3-1118, MCA, is amended to read:

"71-3-1118. Applicability. (1) Except as provided in subsection (2), this part does not apply to compensation awarded to workers for injury, disease, or death pursuant to the Workers' Compensation Act.

(2) This part applies to all payments awarded for medical, therapy, *acupuncture,* chiropractic, dentistry, counseling, and hospital services pursuant to the acts referred to in subsection (1).

(3) This part does not apply to any benefits payable under:

(a) a policy of life insurance or group life insurance;

(b) a contract of disability insurance, except benefits payable in reimbursement for services rendered by a physician, nurse, physical therapist, occupational therapist, *acupuncturist,* chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ *outpatient center for* surgical ~~facility~~ *services*; or

(c) an annuity contract or to pension benefits payable under a qualified pension plan."

Section 50. Repealer. Sections 37-60-315 and 37-60-406, MCA, are repealed.

Section 51. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 37, chapter 65, and the provisions of Title 37, chapter 65, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 37, chapter 69, and the provisions of Title 37, chapter 69, apply to [section 2].

(3) [Section 23] is intended to be codified as an integral part of Title 37, chapter 47, and the provisions of Title 37, chapter 47, apply to [section 23].

(4) [Section 24] is intended to be codified as an integral part of Title 37, chapter 51, part 3, and the provisions of Title 37, chapter 51, part 3, apply to [section 24].

Section 52. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved May 16, 2007

CHAPTER NO. 503

[SB 168]

AN ACT REVISING THE MANDATORY CASH PAYMENT FOR VACATION LEAVE UPON TERMINATION; CLARIFYING THE USE OF VACATION LEAVE PAYMENTS UPON TERMINATION AS PERMISSIBLE CONTRIBUTIONS FOR A VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION; AMENDING SECTIONS 2-18-601, 2-18-617, AND 2-18-1311, MCA; AND PROVIDING AN EFFECTIVE DATE.

Bill Draft Number: LC0556
Bill Type - Number: SB 153
Short Title: Revise professional and occupational licensing laws
Primary Sponsor: Vicki Cocchiarella (D) SD 47
Chapter Number: 502

Bill Actions - **Current Bill Progress:** Became Law

Bill Action Count: 53

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	05/16/2007			
(S) Signed by Governor	05/16/2007			
(S) Transmitted to Governor	05/08/2007			
(H) Signed by Speaker	05/02/2007			
(S) Signed by President	04/27/2007			
(S) Returned from Enrolling	04/24/2007			
(C) Printed - New Version Available	04/23/2007			
(S) Sent to Enrolling	04/20/2007			
(S) 3rd Reading Passed as Amended by House	04/19/2007	46	4	
(S) Scheduled for 3rd Reading	04/19/2007			
(S) 2nd Reading House Amendments Concurred on Voice Vote	04/18/2007	50	0	
(S) Scheduled for 2nd Reading	04/18/2007			
(H) Returned to Senate with Amendments	03/31/2007			
(H) 3rd Reading Concurred	03/31/2007	90	10	
(H) Scheduled for 3rd Reading	03/31/2007			
(H) 2nd Reading Concurred	03/30/2007	85	15	
(H) Scheduled for 2nd Reading	03/30/2007			
(C) Printed - New Version Available	03/28/2007			
(H) Committee Report--Bill Concurred as Amended	03/28/2007			(H) Business and Labor
(H) Committee Executive Action--Bill Concurred as Amended	03/28/2007	16	0	(H) Business and Labor
(H) Hearing	03/16/2007			(H) Business and Labor
(H) Referred to Committee	03/08/2007			(H) Business and Labor
(H) First Reading	03/08/2007			
(S) Transmitted to House	02/06/2007			
(S) 3rd Reading Passed	02/06/2007	50	0	
(S) Scheduled for 3rd Reading	02/06/2007			
(S) 2nd Reading Passed on Voice Vote	02/05/2007	46	0	
(S) Scheduled for 2nd Reading	02/05/2007			
(C) Printed - New Version Available	02/02/2007			

(S) Committee Report--Bill Passed as Amended	02/02/2007			(S) Business, Labor, and Economic Affairs
(S) Committee Executive Action--Bill Passed as Amended	02/02/2007	11	0	(S) Business, Labor, and Economic Affairs
(S) Hearing	01/18/2007			(S) Business, Labor, and Economic Affairs
(S) Fiscal Note Printed	01/08/2007			
(S) Fiscal Note Signed	01/05/2007			
(S) Fiscal Note Received	01/04/2007			
(S) First Reading	01/03/2007			
(S) Referred to Committee	12/27/2006			(S) Business, Labor, and Economic Affairs
(S) Fiscal Note Requested	12/26/2006			
(C) Introduced Bill Text Available Electronically	12/21/2006			
(S) Introduced	12/21/2006			
(C) Pre-Introduction Letter Sent	12/20/2006			
(C) Draft in Assembly/Executive Director Review	12/20/2006			
(C) Draft in Final Drafter Review	12/20/2006			
(C) Bill Draft Text Available Electronically	12/20/2006			
(C) Draft in Input/Proofing	12/20/2006			
(C) Draft to Drafter - Edit Review [JLN]	12/20/2006			
(C) Draft in Edit	12/20/2006			
(C) Draft in Legal Review	12/18/2006			
(C) Draft to Requester for Review	12/05/2006			
(C) Draft to Requester for Review	11/27/2006			
(C) Draft Taken Off Hold	11/20/2006			
(C) Draft On Hold	11/08/2006			
(C) Draft Request Received	09/22/2006			

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Economic Affairs Interim Committee		
Drafter	Murdo	Pat	
By Request Of	Department of Labor and Industry		
Primary Sponsor	Cocchiarella	Vicki	

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Professions and Occupations Generally		Simple	PRO
Revenue, State	Revenue	Simple	REVS

Additional Bill Information

Fiscal Note Probable: Yes
Preintroduction Required: Y
Session Law Ch. Number: 502
DEADLINE
Category: Revenue Bills
Transmittal Date: 04/03/2007
Return (with 2nd house amendments) Date: 04/18/2007

Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	01-OCT-07	

SENATE BILL NO. 153

INTRODUCED BY V. COCCHIARELLA

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PROFESSIONAL AND OCCUPATIONAL LICENSING LAWS; CREATING EMERITUS STATUS FOR ARCHITECTS; CREATING A RETIREMENT LICENSE FOR PLUMBERS; REVISING THE BOARD OF REALTY REGULATION; REVISING THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; CLARIFYING THE DEFINITION OF "LICENSE"; PROVIDING BOARDS WITH PERMISSION TO REQUIRE STATE, REGIONAL, OR NATIONAL CERTIFICATION; EXPANDING THE UNPROFESSIONAL CONDUCT DESCRIPTION; ADDING ELEVATOR CONTRACTORS, MECHANICS, AND INSPECTORS TO THOSE COVERED BY THE UNPROFESSIONAL CONDUCT STATUTE; ADDING NATUROPATHIC PHYSICIAN, PHYSICIAN ASSISTANT, AND OPTOMETRIST TO DEFINITIONS RELATING TO NURSING; REMOVING THE OATH REQUIREMENT TO APPLY FOR A LICENSE AS A NURSE; CLARIFYING APPLICATION REQUIREMENTS FOR OPTOMETRISTS; CLARIFYING THE APPLICATION PROCESS FOR SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS; CLARIFYING TRAINEE LICENSE TERMS FOR HEARING AID DISPENSERS; REVISING TERMS FOR A VETERINARY LICENSE; REVISING RULEMAKING AUTHORITY FOR THE BOARD OF ALTERNATIVE HEALTH CARE; CLARIFYING LICENSING PROCEDURE FOR NATUROPATHIC PHYSICIANS; ~~PROHIBITING STUDENT PRACTITIONERS OF RESPIRATORY CARE FROM RECEIVING REMUNERATION;~~ REVISING DISTRIBUTION OF CERTAIN LICENSEE FEES FOR OUTFITTERS; CLARIFYING CONDITIONS FOR DENYING, SUSPENDING, OR REVOKING AN OUTFITTER'S, GUIDE'S, OR PROFESSIONAL GUIDE'S LICENSE; REQUIRING PUBLICATION OF A LIST OF LICENSED OUTFITTERS; PROVIDING PENALTIES FOR NONCOMPLIANCE BY REAL ESTATE BROKERS OR PROPERTY MANAGERS WITH TRUST ACCOUNT PROVISIONS; CREATING ENDORSEMENT PROVISIONS FOR A SUPERVISING REAL ESTATE BROKER; CREATING A TEMPORARY LICENSE FOR ELEVATOR INSPECTORS; REVISING THE NAME OF AMBULATORY SURGICAL FACILITIES; PROVIDING ACUPUNCTURISTS WITH LIEN RIGHTS; AMENDING SECTIONS 2-15-1757, 2-15-1781, 25-1-1104, 33-36-103, 37-1-130, 37-1-131, 37-1-302, 37-1-401, 37-1-410, 37-8-102, 37-8-405, 37-8-415, 37-10-302, 37-15-302, 37-16-405, 37-18-306, 37-26-201, 37-26-403, ~~37-28-201,~~ 37-47-318, 37-47-341, 37-51-102, 37-51-301, 37-51-302, 37-60-101, 37-60-103, 37-60-202, 37-60-301, 37-60-302, 37-60-303, 37-60-304, 37-60-309, 37-60-310, 37-60-314, 37-60-402, 37-60-403, 37-60-409,

37-73-208, ~~50-4-504, 50-4-605, 50-5-101, 50-5-301,~~ 50-32-314, 71-3-1111, 71-3-1112, 71-3-1113, 71-3-1114, 71-3-1115, 71-3-1117, AND 71-3-1118, MCA; AND REPEALING SECTIONS 37-60-315 AND 37-60-406, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Emeritus status.** (1) A licensee who no longer practices architecture may apply to the department for emeritus status.

(2) Upon receiving an application for emeritus status accompanied by the fee established by the board, the department shall issue a license of emeritus status to the applicant and record the applicant's name in the appropriate database as an emeritus licensee, along with the date on which the licensee received emeritus status.

(3) An emeritus licensee may retain but may not use the licensee's seal and may not practice architecture.

(4) The department shall reissue an active license to an emeritus licensee who pays all application fees, meets all current requirements for licensure, and demonstrates to the board's satisfaction that for the 2 years preceding the application for active licensure, the applicant has met requirements set by the board for maintaining professional competence.

NEW SECTION. **Section 2. License of retirement status.** (1) A licensee who no longer practices plumbing may apply to the department for retirement status.

(2) Upon receiving an application for retirement status accompanied by the fee established by the board, the department shall issue a license of retirement status to the applicant and record the applicant's name in the appropriate database as a holder of a license of retirement status, along with the date on which the licensee received retirement status.

(3) A license of retirement status does not allow a holder to practice plumbing under this chapter.

(4) The department shall reissue an active license to a holder of a license of retirement status who pays the appropriate active license renewal fee AND MEETS ANY COMPETENCY REQUIREMENTS ESTABLISHED BY RULE BY THE DEPARTMENT.

Section 3. Section 2-15-1757, MCA, is amended to read:

"2-15-1757. Board of realty regulation. (1) There is a board of realty regulation.

(2) The board consists of ~~five~~ seven members appointed by the governor with the consent of the senate. ~~Three~~ Five members must be licensed real estate brokers ~~or~~, salespeople, or property managers who are actively engaged in the real estate business as a broker ~~or~~, a salesperson, or a property manager in this state. Two members must be representatives of the public who are not state government officers or employees and who are not engaged in business as a real estate broker, ~~or~~ a salesperson, or a property manager. The members must be residents of this state.

(3) Not more than ~~three~~ five members, including the presiding officer, may be from the same political party.

(4) The members shall serve staggered terms of 4 years. A member may not serve more than two terms or any portion of two terms.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 2-15-1781, MCA, is amended to read:

"2-15-1781. Board of private security ~~patrol officers and investigators.~~ (1) There is a board of private security ~~patrol officers and investigators~~.

(2) The board consists of seven voting members appointed by the governor with the consent of the senate. The members shall represent:

(a) one contract security company or proprietary security organization, as defined by 37-60-101;

(b) one ~~proprietary security organization~~ electronic security company, as defined by 37-60-101;

(c) one city police department;

(d) one county sheriff's office;

(e) one member of the public;

(f) one member of the peace officers' standards and training advisory council; and

(g) a licensed private investigator.

(3) Members of the board must be at least 25 years of age and have been residents of this state for more than 5 years.

(4) The appointed members of the board shall serve for a term of 3 years. The terms of board members must be staggered.

(5) The governor may remove a member for misconduct, incompetency, neglect of duty, or

unprofessional or dishonorable conduct.

(6) A vacancy on the board must be filled in the same manner as the original appointment and may only be for the unexpired portion of the term.

(7) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 5. Section 25-1-1104, MCA, is amended to read:

"25-1-1104. Handbook for process servers. (1) The department of labor and industry shall publish a handbook for process servers and levying officers.

(2) Each person who applies to the clerk of the district court of any county for registration as a process server shall demonstrate that the person has passed an examination based on the handbook and administered by the board of private security ~~patrol officers and investigators~~ provided for in 2-15-1781.

(3) The department of labor and industry may charge a reasonable examination fee to cover the costs of publishing the handbook and administering the examination provided for in this section."

Section 6. Section 33-36-103, MCA, is amended to read:

"33-36-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Closed plan" means a managed care plan that requires covered persons to use only participating providers under the terms of the managed care plan.

(2) "Combination plan" means an open plan with a closed component.

(3) "Covered benefits" means those health care services to which a covered person is entitled under the terms of a health benefit plan.

(4) "Covered person" means a policyholder, subscriber, or enrollee or other individual participating in a health benefit plan.

(5) "Department" means the department of public health and human services established in 2-15-2201.

(6) "Emergency medical condition" means a condition manifesting itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in any of the following:

(a) the covered person's health would be in serious jeopardy;

(b) the covered person's bodily functions would be seriously impaired; or

(c) a bodily organ or part would be seriously damaged.

(7) "Emergency services" means health care items and services furnished or required to evaluate and treat an emergency medical condition.

(8) "Facility" means an institution providing health care services or a health care setting, including but not limited to a hospital, medical assistance facility, or critical access hospital, as defined in 50-5-101, or other licensed inpatient center, an ~~ambulatory surgical or treatment center~~ outpatient center for surgical services ~~or other outpatient~~, A treatment center, a skilled nursing center, a residential treatment center, a diagnostic~~,~~ laboratory, ~~an~~ A DIAGNOSTIC imaging center, or a rehabilitation or other therapeutic health setting.

(9) "Health benefit plan" means a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(10) "Health care professional" means a physician or other health care practitioner licensed, accredited, or certified pursuant to the laws of this state to perform specified health care services consistent with state law.

(11) "Health care provider" or "provider" means a health care professional or a facility.

(12) "Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

(13) "Health carrier" means an entity subject to the insurance laws and rules of this state that contracts, offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a disability insurer, health maintenance organization, or health service corporation or another entity providing a health benefit plan.

(14) "Intermediary" means a person authorized to negotiate, execute, and be a party to a contract between a health carrier and a provider or between a health carrier and a network.

(15) "Managed care plan" means a health benefit plan that either requires or creates incentives, including financial incentives, for a covered person to use health care providers managed, owned, under contract with, or employed by a health carrier, but not preferred provider organizations or other provider networks operated in a fee-for-service indemnity environment.

(16) "Medically necessary" means services, medicines, or supplies that are necessary and appropriate for the diagnosis or treatment of a covered person's illness, injury, or medical condition according to accepted standards of medical practice and that are not provided only as a convenience.

(17) "Network" means the group of participating providers that provides health care services to a managed care plan.

(18) "Open plan" means a managed care plan other than a closed plan that provides incentives, including financial incentives, for covered persons to use participating providers under the terms of the managed care plan.

(19) "Participating provider" means a provider who, under a contract with a health carrier or with the health carrier's contractor, subcontractor, or intermediary, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly from the health carrier.

(20) "Primary care professional" means a participating health care professional designated by the health carrier to supervise, coordinate, or provide initial care or continuing care to a covered person and who may be required by the health carrier to initiate a referral for specialty care and to maintain supervision of health care services rendered to the covered person.

(21) "Quality assessment" means the measurement and evaluation of the quality and outcomes of medical care provided to individuals, groups, or populations.

(22) "Quality assurance" means quality assessment and quality improvement.

(23) "Quality improvement" means an effort to improve the processes and outcomes related to the provision of health care services within a health plan."

Section 7. Section 37-1-130, MCA, is amended to read:

"37-1-130. Definitions. As used in this part, the following definitions apply:

(1) "Administrative fee" means a fee established by the department to cover the cost of administrative services as provided for in 37-1-134.

(2) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(3) "Board fee" means:

(a) a fee established by the board to cover program area costs as provided in 37-1-134; and

(b) any other legislatively prescribed fees specific to boards and department programs.

(4) "Department" means the department of labor and industry established in 2-15-1701.

(5) "Department program" means a program administered by the department pursuant to this title and not affiliated with a board.

(6) "Expired license" means a license that is not reactivated within the period of ~~45~~ 46 days to 2 years after the renewal date for the license.

(7) "Lapsed license" means a license that is not renewed by the renewal date and that may be reactivated within the first 45-day period after the renewal date for the license.

(8) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

(9) "Terminated license" means a license that is not renewed or reactivated within 2 years of the license lapsing."

Section 8. Section 37-1-131, MCA, is amended to read:

"37-1-131. Duties of boards -- quorum required. (1) A quorum of each board within the department shall:

~~(1)~~(a) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;

~~(2)~~(b) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

~~(3)~~(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection ~~(2)~~ (1)(b), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

~~(4)~~(d) pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

~~(5)~~(e) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

~~(6)~~(2) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(3) A board that requires continuing education or continued state, regional, or national certification for licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of this subsection for the renewal cycle.

~~(7)~~(4) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure, as provided in 37-1-306, or require continued state, regional, or national certification for licensure. ~~If~~ Except as provided in subsection (3), if the board or department requires continuing education or continued state, regional, or national certification for continued licensure, the board or department may not audit or ~~verify~~ require proof of continuing education or continued state, regional, or national certification requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits after the lapsed date of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement ~~after the renewal period closes~~.

~~(8)~~(5) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board."

Section 9. Section 37-1-302, MCA, is amended to read:

"37-1-302. Definitions. As used in this part, the following definitions apply:

(1) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3) "Department" means the department of labor and industry.

(4) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

(5) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the board;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether a board should seek an injunction.

(6) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

(7) "Profession" or "occupation" means a profession or occupation regulated by a board."

Section 10. Section 37-1-401, MCA, is amended to read:

"37-1-401. Uniform regulation for licensing programs without boards -- definitions. As used in this part, the following definitions apply:

(1) "Complaint" means a written allegation filed with the department that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the department;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether the department should seek an injunction.

(4) "License" means permission in the form of a license, permit, endorsement, certificate, recognition, or registration granted by the state of Montana to engage in a business activity or practice at a specific level in a profession or occupation governed by:

(a) Title 37, chapter 35, 72, 73, or 76; or

(b) Title 50, chapter 39, 74, or 76.

(5) "Profession" or "occupation" means a profession or occupation regulated by the department under the provisions of:

(a) Title 37, chapter 35, 72, 73, or 76; or

(b) Title 50, chapter 39, 74, or 76."

Section 11. Section 37-1-410, MCA, is amended to read:

"37-1-410. Unprofessional conduct. (1) The following is unprofessional conduct for a licensee or license applicant in a profession or occupation governed by this chapter:

~~(1)~~(a) being convicted, including a conviction following a plea of nolo contendere and regardless of a pending appeal, of a crime relating to or committed during the course of practicing the person's profession or occupation or involving violence, the use or sale of drugs, fraud, deceit, or theft;

~~(2)~~(b) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

~~(3)~~(c) committing fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

~~(4)~~(d) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

~~(5)~~(e) making a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

~~(6)~~(f) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

~~(7)~~(g) ~~the~~ receiving a denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal or under judicial review or has been satisfied.

~~(8)~~(h) ~~failure~~ failing to comply with a term, condition, or limitation of a license by final order of the department;

~~(9)~~(i) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

~~(10)~~(j) misappropriating property or funds from a client or workplace or failing to comply with the department's rule regarding the accounting and distribution of a client's property or funds;

~~(11)~~(k) ~~interference~~ interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts, failure to respond to department inquiries regarding a complaint against the licensee or license applicant,

or the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action or use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

~~(12)~~(l) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice the profession or occupation by use of the licensee's license.

(2) For the purposes of Title 37, chapters 72 and 73, and Title 50, chapters 74 and 76, the following additional practices are considered unprofessional conduct:

(a) addiction to or dependency on alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32;

(b) use of alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally;

(c) conduct that does not meet generally accepted standards of practice. A certified copy of a judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring within the scope of practice and the course of the practice is considered conclusive evidence of, but is not needed to prove, conduct that does not meet generally accepted standards."

Section 12. Section 37-8-102, MCA, is amended to read:

"37-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202.

(2) "Board" means the board of nursing provided for in 2-15-1734.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) "Medication aide" means a person who in an assisted living facility uses standardized procedures in the administration of drugs, as defined in 37-7-101, that are prescribed by a physician, an advanced practice registered nurse with prescriptive authority, a dentist, an osteopath, or a podiatrist authorized by state law to prescribe drugs.

(5) "Nursing education program" means any board-approved school that prepares graduates for initial

licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a junior college, college, or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical institution or junior college.

(6) "Practice of nursing" embraces the practice of practical nursing and the practice of professional nursing.

(7) (a) "Practice of practical nursing" means the performance of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. The practice of practical nursing uses standardized procedures in the observation and care of the ill, injured, and infirm, in the maintenance of health, in action to safeguard life and health, and in the administration of medications and treatments prescribed by a physician, naturopathic physician, physician assistant, optometrist, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, naturopathic physician, physician assistant, optometrist, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(b) These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

(8) "Practice of professional nursing" means the performance of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health, the prevention, casefinding, and management of illness, injury, or infirmity, and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, naturopathic physicians, physician assistants, optometrist, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (8):

(a) "nursing analysis" is the identification of those client problems for which nursing care is indicated and

may include referral to medical or community resources;

(b) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals."

Section 13. Section 37-8-405, MCA, is amended to read:

"37-8-405. Professional nursing -- qualifications of applicants for license. An applicant for a license to practice as a registered professional nurse shall submit to the department written evidence~~, verified by oath,~~ that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) has completed the basic professional curriculum in an approved school of nursing and holds a diploma ~~therefrom~~ from that school; and

(3) meets other qualification requirements the board prescribes."

Section 14. Section 37-8-415, MCA, is amended to read:

"37-8-415. Licensed practical nursing -- qualifications of applicants. An applicant for a license to practice as a licensed practical nurse shall submit to the board written evidence~~, verified by oath,~~ that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) is a graduate of an approved practical nursing education program that is authorized to prepare persons for licensure as practical nurses; and

(3) meets other qualification requirements the board prescribes in its rules."

Section 15. Section 37-10-302, MCA, is amended to read:

"37-10-302. Qualifications -- application. (1) The board shall adopt rules relative to and governing the qualifications of applicants for licensure as optometrists.

(2) A person is not eligible to receive a license unless that person is ~~18 years of age or older and~~ of good moral character.

(3) A person is not eligible to receive a license unless that person has graduated from an accredited ~~high~~

~~school and from a~~ school of optometry in which the practice and science of optometry is taught in a course of study that is accredited by the international association of boards of examiners in optometry.

(4) ~~A person desiring~~ An applicant for a license shall file a completed application on a form provided by the department and pay a fee prescribed by the board."

Section 16. Section 37-15-302, MCA, is amended to read:

"37-15-302. Application forms. ~~Application~~ An application for examination for licensing a speech-language pathologist or audiologist ~~shall~~ must be made upon forms prescribed by the ~~board~~ department."

Section 17. Section 37-16-405, MCA, is amended to read:

"37-16-405. Trainee license. (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take a practical examination may apply to the board for a trainee license.

(2) On receiving an application under subsection (1), accompanied by a fee fixed by the board and verification that the applicant has passed the written portion of the examination with a passing score as determined by board rule, the board shall issue a trainee license that entitles the applicant to engage in a 180-day training period during which the applicant:

(a) is required to pass the practical examination administered by the board before being issued a hearing aid dispenser's license; and

(b) shall work under the direct supervision of the sponsoring licensed hearing aid dispenser. During this time the applicant may do the testing necessary for proper selection and fitting of hearing aids and related devices and make necessary impressions. However, the delivery and final fitting of the hearing aid and related devices must be made by the trainee and the supervisor.

(3) The training period must consist of a continuous 180-day term. Any break in training requires application for another trainee license under rules that the board may prescribe.

(4) A trainee license may not be issued unless the board has on file an unrevoked statement from a qualified licensed hearing aid dispenser accepting responsibility for the trainee. Every licensed hearing aid dispenser supervising a trainee license holder shall submit a report every 90 days of the trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible for all hearing aid fittings of the trainee. A supervisor may terminate any responsibilities to the trainee by mailing by certified mail written notice to the board and the trainee.

(5) If a person who holds a trainee license takes and fails to pass the practical examination ~~during the training period, the board may authorize the department to renew the trainee license for a period of 180 days, during which the provisions of subsection (2)(b) apply. More than one renewal is not permitted~~, the trainee license expires, and the person may not practice as a trainee.

(6) A person licensed as an audiologist under the provisions of Title 37, chapter 15, or a person practicing pursuant to 37-1-305 is exempt from the 180-day training period but is required to pass the examinations prescribed in this chapter.

(7) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee as if the conduct were the licensee's own.

(8) For the purposes of this section, "direct supervision" means the direct and regular observation and instruction of a trainee by a licensed hearing aid dispenser who is available at the same location for prompt consultation and treatment."

Section 18. Section 37-18-306, MCA, is amended to read:

"37-18-306. Display of license and certificate. A person may not practice veterinary medicine in this state without possessing and displaying prominently in ~~his~~ the person's principal office ~~a license and~~ a current and valid ~~certificate of registration~~ license issued under this part."

Section 19. Section 37-26-201, MCA, is amended to read:

"37-26-201. Powers and duties of board. The board shall:

(1) adopt rules necessary or proper to administer and enforce this chapter;

(2) adopt rules that specify the scope of practice of naturopathic medicine stated in 37-26-301, that are consistent with the definition of naturopathic medicine provided in 37-26-103, and that are consistent with the education provided by approved naturopathic medical colleges;

(3) adopt rules that endorse equivalent licensure examinations of another state or territory of the United States, the District of Columbia, or a foreign country and that may include licensure by reciprocity;

(4) adopt rules that set nonrefundable fees for application, and licensure;

(5) approve naturopathic medical colleges as defined in 37-26-103;

(6) issue certificates of specialty practice;

(7) adopt rules that, in the discretion of the board, appropriately restrict licenses to a limited scope of practice of naturopathic medicine, which may exclude the use of minor surgery allowed under 37-26-301; and

(8) adopt rules that contain the natural substance formulary list created by the alternative health care formulary committee provided for in 37-26-301~~; and~~

~~(9) adopt rules to implement the provisions in 37-1-138~~."

Section 20. Section 37-26-403, MCA, is amended to read:

"37-26-403. Application for licensure ~~-- examination -- temporary license~~. (1) A person who desires a license to practice naturopathic medicine in Montana shall apply to the department.

(2) The application must be accompanied by the license fees, the application fees, and the documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by 37-26-402. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the necessary qualifications and whether the applicant has committed unprofessional conduct that would be a basis for licensure denial.

(3) At the board's request, the applicant shall provide necessary authorizations for the release of records and information pertinent to the department's investigation.

~~(2) A person who applies for licensure but who has not passed a licensure examination prescribed or endorsed by the board shall apply to the board for authorization to take the prescribed licensure examination. If the board finds that all other qualifications for licensure except that of examination have been met, the board shall authorize the applicant to take the licensure examination.~~"

~~**Section 21.** Section 37-28-201, MCA, is amended to read:~~

~~**"37-28-201. License required -- exceptions -- respiratory care not the practice of medicine.** (1) Except as otherwise provided in this chapter, a person may not practice respiratory care or represent to the public that the person is a respiratory care practitioner unless licensed under the provisions of this chapter.~~

~~(2) This chapter does not prohibit:~~

~~(a) the practice of respiratory care that is an integral part of study by a student respiratory care practitioner;~~

~~(b) self-care by a patient or the gratuitous care by a friend or family member who does not purport to be a respiratory care practitioner; or~~

~~(c) respiratory care rendered in the course of an emergency.~~

~~(3) This chapter is not intended to limit, preclude, or interfere with the practice of other persons and health care providers licensed by the appropriate agencies of the state of Montana.~~

~~(4) Student practitioners providing respiratory care may not receive payment for their services.~~

~~(5) This chapter may not be construed to permit the practice of medicine."~~

Section 21. Section 37-47-318, MCA, is amended to read:

"37-47-318. Fees in addition to annual license fee -- allocation. (1) In addition to the fees required in 37-47-306 for an outfitter providing hunting services, the following fees apply:

(a) An outfitter shall pay an annual fee of $2 for each client served.

(b) An outfitter who is granted a net client hunter use expansion shall pay a fee of $500 for each new client added to that outfitter's operations plan.

(c) (i) An outfitter who operates hunting camps in more than one department of fish, wildlife, and parks administrative region shall pay an annual fee of $5,000 for each camp that is located beyond a 100-mile radius of the outfitter's base of operations and that is in an administrative region other than the region containing the outfitter's base of operations.

(ii) A fee is not required for the following:

~~(i)~~(A) an outfitter's base of operations camp;

~~(ii)~~(B) camps established before January 1, 1999;

~~(iii)~~(C) camps established on public land when use is directly regulated by public land use policies; or

~~(iv)~~(D) camps on corporate timberlands where public access is not restricted.

(d) An outfitter who desires a net client hunter use expansion shall pay a nonrefundable fee of $2,000 for each expansion request.

(2) Fees collected pursuant to this section must be expended by the board, pursuant to the authority in 37-47-306, and by the department of fish, wildlife, and parks, pursuant to the authority in 87-1-601, and used to fund administrative costs related to implementation of this chapter. The fees collected must be allocated as follows:

(a) Revenue generated by the $2 fee imposed in subsection (1)(a), the $500 fee imposed in subsection (1)(b), and the $2,000 fee imposed in subsection (1)(d) must be split equally between the board and the department of fish, wildlife, and parks.

~~(b) Revenue generated by the $500 fee imposed in subsection (1)(b) must be allocated between the board and the department of fish, wildlife, and parks in the following order:~~

~~(i) the amount necessary to cover the department's administrative expenses that exceed the revenue generated by subsection (2)(a); and~~

~~(ii) the remaining amount to be deposited in the state special revenue fund to the credit of the board.~~

~~(c)~~(b) Revenue generated by the $5,000 fee imposed in subsection (1)(c) must be deposited in the state special revenue fund to the credit of the board.

~~(d) Revenue generated by the $2,000 fee imposed in subsection (1)(d) must be split equally between the board and the department of fish, wildlife, and parks.~~"

Section 22. Section 37-47-341, MCA, is amended to read:

"37-47-341. Grounds for denial, suspension, or revocation of license. A license or right to apply for and hold a license issued under this part may be denied, suspended, or revoked or other disciplinary conditions may be applied upon any of the following grounds:

(1) having ceased to meet all of the qualifications for holding a license, as required under this chapter and rules adopted pursuant to this chapter;

(2) fraud or deception in procuring a license;

(3) fraudulent, untruthful, or misleading advertising;

(4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law. ~~A person may not apply for or hold an outfitter's, guide's, or professional guide's license during any period of time in which a sentence for a felony has been deferred or suspended.~~

(5) one conviction or bond forfeiture as to a violation of the fish and game or outfitting laws or regulations of any state or the United States;

(6) a substantial breach of a contract with a participant provided that the breach is established as a matter of final judgment in a court of law;

(7) the willful employment of or contracting with an unlicensed guide or professional guide by an outfitter;

(8) negligence or misconduct while acting as an outfitter, guide, or professional guide that causes an accident or injury to the person or property of a participant;

(9) misconduct as defined by board rule; or

(10) any violation of this chapter or a rule adopted pursuant to this chapter."

NEW SECTION. **Section 23. Publication of license information.** (1) The department shall prepare and publish an information pamphlet that contains the names and addresses of all licensed outfitters.

(2) The pamphlet described in subsection (1) must be available for free distribution as early as possible each calendar year but not later than the second Friday in March of each year.

(3) The pamphlet must contain the names, license numbers, and addresses of only those outfitters who have a currently valid license.

NEW SECTION. **Section 24. Penalty for failure to comply with trust account requirements.** (1) An employee of the department may issue a citation to a broker or property manager responsible for maintenance of a trust account for failure to comply with trust account maintenance requirements as provided by rule under 37-1-319(4).

(2) The citation must include:

(a) the time and date on which the citation is issued;

(b) the name, title, mailing address, and signature of the person issuing the citation;

(c) reference to the statute or rule violated;

(d) the name, title, and mailing address of the person to whom the citation is being sent, along with information explaining the procedure for the person receiving the citation to follow to pay the fine or dispute the violation; and

(e) the amount of the applicable fine.

(3) The applicable civil fine for failure to comply with trust account maintenance requirements is $50 for each cited violation.

(4) The person who issues the citation is authorized to collect the fine and deposit the proceeds in the state special revenue account to the credit of the board.

(5) The person who is issued a citation may pay the fine or file a written dispute of the violation with the board within 5 business days of the date of issuance.

(6) A person who refuses to sign and accept a citation but who does not file a written dispute of the violation is demonstrating unprofessional conduct.

Section 25. Section 37-51-102, MCA, is amended to read:

"37-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.

(3) "Board" means the board of realty regulation provided for in 2-15-1757.

(4) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson

the name of a prospective buyer or seller of real property; or

(g) advertises or represents to the public that the individual is engaged in any of the activities referred to in subsections (4)(a) through (4)(f).

(5) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who has entered into an agreement to acquire an interest in real property. The term includes tenants or potential tenants with respect to leases or rental agreements of real property.

(6) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

(7) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

(8) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a buyer.

(9) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(10) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written authorization, as provided in 37-51-314. An in-house buyer or seller agent designate may not be considered a dual agent.

(11) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(12) "In-house buyer agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for other than the buyer with respect to the designated transaction.

(13) "In-house seller agent designate" means a broker or salesperson employed by or associated as an

independent contractor with a broker and designated by the broker as the exclusive agent for a seller for a designated transaction and who may not be considered to be acting for other than the seller with respect to the designated transaction.

(14) "Listing agreement" means a written agreement between a seller and broker for the sale of real estate, with the terms and conditions set out in the agreement.

(15) "Negotiations" means:

(a) efforts to act as an intermediary between parties to a real estate transaction;

(b) facilitating and participating in contract discussions;

(c) completing forms for offers, counteroffers, addendums, and other writings; and

(d) presenting offers and counteroffers.

(16) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(17) "Property manager" includes a person who for a salary, commission, or compensation of any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602.

(18) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(19) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale, exchange, or lease of an interest in real estate and includes all communication, interposition, advisement, negotiation, and contract development and closing.

(20) "Salesperson" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(21) "Seller" means a person who has entered into a listing agreement to sell real estate and includes landlords who have an interest in or are a party to a lease or rental agreement.

(22) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

(23) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

(24) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real estate

transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in this chapter, a relationship other than that of a statutory broker.

(25) "Supervising broker" means a licensed broker with whom a licensed salesperson is associated, either directly, indirectly, regularly, or occasionally, to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(26) "Supervising broker endorsement" means an endorsement to a broker license that is required of any licensed broker who supervises licensed salespersons performing real estate activity."

Section 26. Section 37-51-301, MCA, is amended to read:

"37-51-301. License required -- limited to persons. (1) It is unlawful for a person to engage in or conduct, directly or indirectly, or to advertise or ~~hold himself out~~ represent to the public as engaging in or conducting the business or acting in the capacity of a real estate broker or a real estate salesperson within this state without a license as a broker or salesperson or otherwise complying with this chapter.

(2) It is unlawful for a person to supervise licensed salespersons or to act in the capacity of a supervising broker unless the person has a valid and active Montana broker license and a supervising broker endorsement.

~~(2)~~(3) Corporations, partnerships, and associations may not be licensed under this chapter. A corporation or a partnership may act as a licensee if every corporate officer and every partner performing the functions of a licensee is licensed under this chapter. All officers of a corporation or all members of a partnership acting as a licensee are in violation of this chapter unless there is full compliance with this subsection."

Section 27. Section 37-51-302, MCA, is amended to read:

"37-51-302. Broker or salesperson license -- qualifications of applicant -- supervising broker endorsement. (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesperson in a manner ~~as to safeguard~~ that safeguards the interests of the public.

(2) An applicant for a broker's license:

(a) must be at least 18 years of age;

(b) must have graduated from an accredited high school or completed an equivalent education as

determined by the board;

(c) must have been actively engaged as a licensed real estate salesperson for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesperson ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesperson because of conditions existing in the area where the applicant resides, the board may waive this experience requirement;

(d) shall file an application for a license with the department; and

(e) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours, in addition to those required to secure a salesperson's license, in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law, real estate finance, and related topics.

(3) The board shall require information it considers necessary from an applicant to determine honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesperson's license:

(i) must be at least 18 years of age;

(ii) must have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board;

(iii) shall file an application for a license with the department; and

(iv) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

(b) The application must be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect.

(5) The department shall issue to each licensed broker and to each licensed salesperson a license and a pocket card in a form and size that the board prescribes.

(6) (A) An applicant for a supervising broker endorsement shall meet the education and experience requirements established by the board by rule. EXCEPT THAT:

(I) ANY BROKER LICENSED PRIOR TO OCTOBER 1, 2007, IS ENTITLED TO A SUPERVISING BROKER ENDORSEMENT PROVIDED THAT THE BROKER INDICATES ON THE BROKER'S LICENSE RENEWAL FORM FOR THE 2008 CALENDAR YEAR THE BROKER'S INTENTION TO OBTAIN THE ENDORSEMENT;

(II) A BROKER WHO OBTAINS A SUPERVISING BROKER ENDORSEMENT PURSUANT TO SUBSECTION (6)(A)(I) IS SUBJECT TO THE ENDORSEMENT RENEWAL REQUIREMENTS ADOPTED BY THE BOARD BY RULE IN ORDER TO SUPERVISE ONE OR MORE LICENSED SALESPERSONS;

(III) CONTINUING EDUCATION REQUIREMENTS FOR A SUPERVISING BROKER ENDORSEMENT MAY NOT BE IN ADDITION TO THE CONTINUING EDUCATION REQUIREMENTS FOR A LICENSED BROKER WITH RESPECT TO THE TOTAL NUMBER OF HOURS OR CREDITS REQUIRED.

(B) THE BOARD MAY NOT ASSESS A LICENSING FEE FOR OBTAINING OR RENEWING A SUPERVISING BROKER ENDORSEMENT."

Section 28. Section 37-60-101, MCA, is amended to read:

"37-60-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Alarm response runner" means ~~any~~ an individual employed by an electronic security company, a contract security company, or a proprietary security organization to respond to security alarm system signals.

(2) "Armed" means an individual who at any time wears, carries, or possesses a firearm in the performance of professional duties.

~~(2)~~(3) "Armed carrier service" means any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

~~(3)~~(4) "Armed private investigator" means a private investigator who at any time wears, carries, or possesses~~, or has access to~~ a firearm in the performance of the individual's duties.

~~(4)~~(5) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, or carrier service guard~~, or alarm response runner~~ and who at any time wears or carries a firearm in the performance of the individual's duties.

~~(5)~~(6) "Armored car service" means any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

~~(6)~~(7) "Board" means the board of private security ~~patrol officers and investigators~~ provided for in 2-15-1781.

~~(7)~~(8) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.

~~(8)~~(9) "Contract security company" means any person who ~~installs or maintains a security alarm system,~~ undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.

~~(9)~~(10) "Department" means the department of labor and industry provided for in 2-15-1701.

(11) (A) "Electronic security company" means a person who installs, services, or maintains a security alarm system and who undertakes to hire, employ, and provide alarm response runners and security alarm installers on a contractual basis to another person who does not exercise direction and control over the performance of the services rendered.

(B) THE TERM DOES NOT INCLUDE A PERSON WHOSE PRIMARY BUSINESS IS THAT OF A LOCKSMITH AND WHO MAY ALSO INSTALL CLOSED CIRCUIT TELEVISION CAMERAS AND BATTERY-OPERATED DOOR DEVICES.

(12) (a) "Fire investigator" means a person other than an individual identified in subsection (12)(b) who for any consideration:

(i) makes or agrees to make an investigation with reference to:

(A) a fire to identify evidence and determine cause of the fire; or

(B) accidents involving suspected negligence or arson for criminal or civil action;

(ii) testifies as an expert witness for investigations identified under this subsection (12); or

(iii) cooperates with law enforcement agencies in conducting fire investigations and collecting evidence relating to fires.

(b) The term does not mean an insurance adjuster, an individual designated as the state fire marshal under 2-15-2005, or a member of:

(i) a fire department as described in 7-3-1345;

(ii) law enforcement; or

(iii) an entity organized under Title 7, chapter 33.

(13) "Firearms course" means the course approved by the board and conducted by a firearms instructor.

(14) "Firearms instructor" means an individual who has been approved by the board to instruct firearms

courses in the use of weapons.

~~(10)~~(15) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration ~~whatsoever~~ conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes ~~or wrongs committed or threatened~~ against the United States or any state or territory of the United States.

~~(11)~~(16) "Licensee" means a person licensed under this chapter.

~~(12)~~(17) "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work.

~~(13)~~(18) "Person" ~~includes any~~ means an individual, firm, company, association, organization, partnership, ~~and~~ or corporation.

~~(14)~~(19) "Private investigator" means a person other than an insurance adjuster who for any consideration ~~whatsoever~~ makes or agrees to make any investigation with reference to:

(a) crimes ~~or wrongs done or threatened~~ against the United States or any state or territory of the United States;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, ~~whereabouts~~ location, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for ~~fires,~~ libels, losses, accidents, or injury to persons or property; or

(e) ~~securing~~ gathering evidence to be used before any court, board, officer, or investigating committee.

~~(15)~~(20) "Private security guard" means an individual employed or assigned duties to protect a person or property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property or the direction of the movements of the public in public areas.

~~(16)~~(21) "Proprietary security organization" means any person who employs a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis

solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

~~(17) "Qualifying agent" means, in the case of a corporation, a corporate employee employed in a management capacity or, in the case of a partnership, a general or unlimited partner meeting the qualifications set forth in this chapter for the operation of a contract security company, proprietary security organization, or private investigator, whichever is applicable.~~

~~(18)~~(22) "Resident manager" means the person appointed to exercise direct supervision, control, charge, management, or operation of each branch office located in this state where the business of the licensee is conducted.

(23) (A) "Security alarm installer" means an individual who installs, services, or maintains security alarm systems to detect and signal unauthorized intrusion, movement, break-in, or criminal acts and is employed by an electronic security company.

(B) THE TERM DOES NOT INCLUDE A PERSON WHOSE PRIMARY BUSINESS IS THAT OF A LOCKSMITH AND WHO MAY ALSO INSTALL CLOSED CIRCUIT TELEVISION CAMERAS AND BATTERY-OPERATED DOOR DEVICES.

~~(19)~~(24) (a) "Security alarm system" means an assembly of equipment and devices or a single device~~, such as a solid state unit that plugs directly into a 110-volt AC line, designed~~ or a portion of a system intended to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a ~~protected premises and to which signals police, private security guards, or alarm response runners are expected to respond~~ location.

(b) The term does not include ~~alarm systems and alarm~~ systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a ~~premises~~ location.

(25) "Security company" means an electronic security company, a proprietary security organization, or a contract security company.

~~(20)~~(26) "Street patrol service" means ~~any contract security company or proprietary security organization that uses foot patrols, motor vehicles, or any other means of transportation to maintain public order or detect criminal activities in public areas or thoroughfares~~ a person providing patrols by means of foot, vehicle, or other method of transportation using public street, thoroughfares, or property in the performance of the person's duties and responsibilities.

~~(21)~~(27) "Unarmed private investigator" means a private investigator who does not wear, carry, or

possess~~, or have access to~~ a firearm in the performance of the individual's duties.

~~(22)~~(28) "Unarmed private security guard" means an individual who is employed by a contract security company or a proprietary security organization, whose duty or any portion of whose duty is that of a private security guard, armored car service guard, or alarm response runner, and who does not wear ~~or~~, carry, or possess a firearm in the performance of those duties."

Section 29. Section 37-60-103, MCA, is amended to read:

"37-60-103. Purpose. The purpose of this chapter is to increase the levels of integrity, competency, and performance of ~~private~~ security ~~personnel~~ companies and their employees who are required to be licensed, firearms instructors, fire investigators, and private investigators ~~in order~~ to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by ~~private~~ security ~~personnel~~ companies and their licensed employees, firearms instructors, fire investigators, or private investigators."

Section 30. Section 37-60-202, MCA, is amended to read:

"37-60-202. Rulemaking power. The board shall adopt and enforce rules:

(1) fixing the qualifications of resident managers, ~~qualifying agents,~~ licensees, and holders of identification cards, in addition to those prescribed in this chapter, necessary to promote and protect the public welfare;

(2) establishing, in accordance with 37-1-134, application fees for original ~~or renewal~~ licenses and identification cards, and providing for refunding of any fees;

(3) (a) ~~prohibiting~~ requiring approval of the board prior to the establishment of branch offices of any licensee~~, except a proprietary security organization, without approval by the board~~; and

(b) establishing qualification requirements and license fees for branch offices identified in subsection (3)(a);

(4) for the certification of private investigator ~~and~~, private security guard, security alarm installer, and alarm response runner training programs, including the certification of firearms training programs;

(5) for the licensure of firearms instructors;

(6) for the approval of weapons;

(7) requiring the maintenance of records;

(8) requiring licensees to file an insurance policy with the board; and

(9) providing for the issuance of probationary identification cards for private investigators and security alarm installers who do not meet the requirements for age, employment experience, ~~and~~ or written examination."

Section 31. Section 37-60-301, MCA, is amended to read:

"37-60-301. License required. (1) Except as provided in 37-60-105 ~~and 37-60-315~~, it is unlawful for any person to act as or perform the duties, as defined in 37-60-101, of a contract security company ~~or~~, a proprietary security organization, an electronic security company, a branch office, a private investigator, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard without having first obtained a license from the board. ~~Those persons licensed on April 18, 1983, shall retain their current licensure status and shall renew their licenses on the renewal date as prescribed by the department.~~

(2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that the person is licensed as ~~a private investigator,~~ a contract security company, a proprietary security organization, an electronic security company, a branch office, a private investigator, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard.

(3) A person appointed by the court as a confidential intermediary under 42-6-104 is not required to be licensed under this chapter. A person who is licensed under this chapter is not authorized to act as a confidential intermediary, as defined in 42-1-103, without meeting the requirements of 42-6-104.

(4) A person who knowingly engages an unlicensed ~~private investigator, private security guard, or~~ contract security company, proprietary security organization, electronic security company, branch office, private investigator, fire investigator, security alarm installer, alarm response runner, resident manager, certified firearms instructor, or private security guard is guilty of a misdemeanor punishable under 37-60-411."

Section 32. Section 37-60-302, MCA, is amended to read:

"37-60-302. ~~Qualifying agent and resident~~ Resident manager required ~~-- substitution~~. (1) Any ~~out-of-state~~ contract security company, electronic security company, or proprietary security organization that applies for a license under this chapter shall~~, before application to the board,~~ appoint for the duration of the license ~~a qualifying agent and~~ a resident manager. ~~Every qualifying agent and~~ Each resident manager shall satisfy the appropriate licensing requirements of this chapter.

(2) A separate resident manager must be appointed for each branch office located in this state, and the

business of the applicant or licensee must be conducted under the resident manager's direct supervision and control.

(3) If a ~~qualifying agent or~~ resident manager for any reason ceases to perform the duties of a ~~qualifying agent or~~ resident manager on a regular basis, the licensee shall promptly notify the board of that fact ~~and of the name of a substitute individual, who shall apply to the board for continuation of the license. Pending application by and board action upon the application of the substitute, the board may suspend the license or extend it for a reasonable time~~."

Section 33. Section 37-60-303, MCA, is amended to read:

"37-60-303. License qualifications. (1) Except as provided in subsection (7)(a), an applicant for licensure under this chapter is subject to the provisions of this section and shall submit evidence under oath that the applicant:

(a) is at least 18 years of age;

(b) is a citizen of the United States or a legal, permanent resident of the United States;

(c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

(d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;

(e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;

(f) is of good moral character; and

(g) has complied with other experience qualifications as may be set by the rules of the board.

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard, security alarm installer, or alarm response runner shall:

(a) complete the ~~training~~ requirements of a ~~private security guard~~ training program certified by the board and provide, on a form prescribed by the board, written notice of satisfactory completion of the training; and

(b) fulfill other requirements as the board may by rule prescribe.

(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that the applicant:

(a) is at least 21 years of age;

(b) has at least a high school education or the equivalent;

(c) has not been dishonorably discharged from any branch of the United States military service; and

(d) has fulfilled any other requirements as the board may by rule prescribe.

(4) The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.

(5) An applicant who will wear, ~~or~~ carry, or possess a firearm in performance of the applicant's duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as the board may by rule prescribe.

(6) Except for an applicant subject to the provisions of subsection (7)(a), the board shall require a background investigation of each applicant for licensure under this chapter that includes a fingerprint check by the Montana department of justice and the federal bureau of investigation.

(7) (a) A firm, company, association, partnership, limited liability company, corporation, or other entity that intends to engage in business governed by the provisions of this chapter must be incorporated under the laws of this state or qualified to do business within this state and must be licensed by the board.

(b) Individual employees, officers, directors, agents, or other representatives of an entity described in subsection (7)(a) who engage in duties that are subject to the provisions of this part must be licensed pursuant to the requirements of this part."

Section 34. Section 37-60-304, MCA, is amended to read:

"37-60-304. Licenses -- application form and content. (1) ~~Except as provided in 37-60-303(7), an~~ An application for a license must be submitted to the department and accompanied by the application fee set by the board.

(2) An application must be made under oath and must include:

(a) the full name and address of the applicant;

(b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, an electronic security company, a branch office, a certified firearms instructor, a private investigator, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, or a private security guard;

(e) except for an applicant pursuant to 37-60-303(7)(a), one recent photograph of the applicant, of a type

prescribed by the department, and one classifiable set of the applicant's fingerprints;

(f) a statement of the applicant's age and experience qualifications, except for an applicant pursuant to 37-60-303(7)(a); and

(g) other information, evidence, statements, or documents as may be prescribed by the rules of the board.

(3) The board shall verify the statements in the application ~~and the applicant's moral character~~.

(4) The submittal of fingerprints is a prerequisite to the issuance of a license, except under 37-60-303(7)(a), by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation."

Section 35. Section 37-60-309, MCA, is amended to read:

"37-60-309. Form of license and identification cards. The license~~,~~ and identification card~~, and temporary identification card for temporary security guards~~ must be in a form determined by the board."

Section 36. Section 37-60-310, MCA, is amended to read:

"37-60-310. Display of license and identification card. (1) A license must at all times be posted in a conspicuous place in the principal place of business of the licensee.

(2) A holder of an identification card ~~or a temporary identification card~~ shall carry the card while performing the cardholder's duties. A peace officer of this state or any of its political subdivisions may request to see the card at any reasonable time, and the card must be shown."

Section 37. Section 37-60-314, MCA, is amended to read:

"37-60-314. Nontransferability of license -- record changes. (1) ~~No~~ A license issued under this chapter is not transferable.

(2) A licensee shall notify the board within 5 days of any change in its officers or directors, name, address, employment, or other material change in the information previously furnished or required to be furnished to the board or any other material change or occurrence that could reasonably be expected to affect the licensee's right to a license. Upon ~~such~~ the change or occurrence, the board may suspend or revoke the license or may allow the business to be carried on for a temporary period under terms and conditions as the board may require.

(3) This section may not be applied to restrict the sale of a business if the buyer qualifies for a license

under the provisions of this chapter."

Section 38. Section 37-60-402, MCA, is amended to read:

"37-60-402. Confidentiality of information -- false reports -- badges and uniforms -- illegal entry. (1) A licensee or officer, director, partner, or manager of a licensee may divulge to any law enforcement officer or county attorney or ~~his~~ representative of the county attorney any information ~~he~~ that the licensee or officer, director, partner, or manager of a licensee may acquire as to any criminal offense~~,~~ but ~~he~~ may not divulge to any other person, except as required by law, any information acquired ~~by him~~ except at the direction of the employer or client for whom the information was obtained.

(2) ~~No~~ A licensee or officer, director, partner, manager, or employee of a licensee may not knowingly make any false report to ~~his~~ an employer or client for whom information was being obtained.

(3) ~~No~~ A written report may not be submitted to a client except by the licensee~~, qualifying manager,~~ or a person authorized by ~~either of them~~ the licensee, and the person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in the report are true and correct.

(4) ~~No~~ A licensee or officer, director, partner, manager, or employee of a licensee may not use a title, wear a uniform, use an identification card, or make any statement with the intent to give an impression that ~~he~~ the licensee or officer, director, partner, manager, or employee of a licensee is connected in any way with the federal government, a state government, a law enforcement agency, or any political subdivision of a state government unless the licensee has a contract with the agency.

(5) ~~No~~ A licensee or officer, director, partner, manager, or employee of a licensee may not enter any private building or portion ~~thereof~~ of a private building without the consent of the owner or of the person in legal possession ~~thereof~~ of the private building."

Section 39. Section 37-60-403, MCA, is amended to read:

"37-60-403. Licensee advertising. Every advertisement by a licensee soliciting or advertising business ~~shall~~ must contain ~~his~~ the licensee's name ~~and~~, address, and license number as they appear in the records of the board."

Section 40. Section 37-60-409, MCA, is amended to read:

"37-60-409. Installation of new security alarm systems by electrician. An electrician who has

received a license from the department pursuant to 37-68-301 may install new security alarm systems under the direction of a ~~journeyman~~ licensed security alarm installer~~, but such work~~. Work performed by an electrician under this section is subject to inspection and approval by a security alarm installer licensed under 37-60-303."

Section 41. Section 37-73-208, MCA, is amended to read:

"37-73-208. Elevator inspector's license -- temporary license. (1) A person intending to engage in work as an elevator inspector shall apply for a license as an elevator inspector on forms provided by the department.

(2) The department may not grant an applicant an elevator inspector's license unless the applicant demonstrates that the applicant meets the current national standards for the qualifications of elevator inspectors. The department shall designate by rule the national standards that must be met by an applicant.

(3) A newly hired elevator inspector who is not properly certified may conduct inspections for up to 6 months under a temporary license if the elevator inspector is supervised during the 6-month period of temporary licensure by appropriately certified personnel."

~~**Section 43.** Section 50-4-504, MCA, is amended to read:~~

~~**"50-4-504. Definitions.** As used in this part, the following definitions apply:~~

~~(1) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.~~

~~(2) "Health care" includes both physical health care and mental health care.~~

~~(3) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory outpatient care to two or more unrelated persons. The term includes all facilities and institutions included in the definition of health care facility contained in 50-5-101. The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing.~~

~~(4) "Health care provider" or "provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.~~

~~(5) "Health insurer" means any health insurance company, health service corporation, health maintenance organization, insurer providing disability insurance as described in 33-1-207, and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit~~

plan offered by public and private entities."

Section 44. Section 50-4-605, MCA, is amended to read:

"50-4-605. Definitions. For the purposes of this part, the following definitions apply:

(1) "Certificate of public advantage" or "certificate" means a written certificate issued by the department as evidence of the department's intention that the implementation of a cooperative agreement, when actively supervised by the department, receive state action immunity from prosecution as a violation of state or federal antitrust laws.

(2) "Cooperative agreement" or "agreement" means a written agreement between two or more health care facilities for the sharing, allocation, or referral of patients; personnel; instructional programs; emergency medical services; support services and facilities; medical, diagnostic, or laboratory facilities or procedures; or other services customarily offered by health care facilities.

(3) "Department" means the department of justice provided for in Title 2, chapter 15, part 20.

(4) (a) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory outpatient care to two or more unrelated persons. The term includes all facilities and institutions included in the definition of health care facility contained in 50-5-101.

(b) The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing."

Section 45. Section 50-5-101, MCA, is amended to read:

"50-5-101. (Temporary) Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys ambulatory outpatient centers for surgical centers services upon their requests and grants accreditation status to the ambulatory outpatient centers for surgical centers services that it finds meet its standards and requirements.

(3) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

~~(4) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.~~

~~(5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.~~

~~(b) As used in this subsection (5), the following definitions apply:~~

~~(i) "Aged person" means a person as defined by department rule as aged.~~

~~(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.~~

~~(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.~~

~~(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as~~, including bathing, dressing, and hair grooming and supervision of prescriptive ~~medicine administration.~~

~~(B) The term does not include the administration of prescriptive medications.~~

~~(6) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.~~

~~(7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.~~

~~(8) "Capital expenditure" means:~~

~~(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or~~

~~(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.~~

~~(9) "Certificate of need" means a written authorization by the department for a person to proceed with~~

~~a proposal subject to 50-5-301.~~

~~(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.~~

~~(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.~~

~~(12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.~~

~~(13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.~~

~~(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.~~

~~(15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.~~

~~(16) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.~~

~~(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.~~

~~(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.~~

~~(19) "Department" means the department of public health and human services provided for in 2-15-2201.~~

~~(20) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.~~

~~(21) "Federal acts" means federal statutes for the construction of health care facilities.~~

~~(22) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.~~

~~(23) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.~~

~~(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.~~

~~(24) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.~~

~~(25) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.~~

~~(26) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.~~

~~(27) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:~~

~~(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that~~

~~meets all medicare certification regulations for freestanding inpatient hospice facilities; and~~

~~(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.~~

~~(28) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Except as otherwise provided by law, services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes:~~

~~(i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients; and~~

~~(ii) specialty hospitals.~~

~~(b) The term does not include critical access hospitals.~~

~~(29) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:~~

~~(a) an "infirmary--A" provides outpatient and inpatient care;~~

~~(b) an "infirmary--B" provides outpatient care only.~~

~~(30) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.~~

~~(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.~~

~~(31) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.~~

~~(32) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.~~

~~(33) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.~~

~~(34) "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.~~

~~(35) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.~~

~~(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.~~

~~(36) "Medical assistance facility" means a facility that meets both of the following:~~

~~(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.~~

~~(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.~~

~~(37) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.~~

~~(38) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.~~

~~(39) "Offer" means the representation by a health care facility that it can provide specific health services.~~

~~(40) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:~~

~~(i) serves either adjudicated or nonadjudicated youth;~~

~~(ii) charges a fee for its services; and~~

~~(iii) provides all or part of its services in the outdoors.~~

~~(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.~~

~~(41) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.~~

~~(42) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.~~

~~(43) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.~~

~~(44) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.~~

~~(45) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.~~

~~(46) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.~~

~~(47) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.~~

~~(48) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.~~

~~(49) "Resident" means an individual who is in a long-term care facility or in a residential care facility.~~

~~(50) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.~~

~~(51) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral~~

~~dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.~~

~~(52) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.~~

~~(53) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.~~

~~(54) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.~~

~~(55) "Specialty hospital" means a specialty hospital as defined in 50-5-245.~~

~~(56) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.~~

~~(57) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient. (Terminates July 1, 2007--sec. 6, Ch. 365, L. 2005.)~~

~~**50-5-101. (Effective July 1, 2007) Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:~~

~~(1) "Accreditation" means a designation of approval.~~

~~(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys ambulatory~~ outpatient centers for ~~surgical centers~~ services ~~upon their requests and grants accreditation status to the ambulatory~~ outpatient centers for ~~surgical centers~~ services ~~that it finds meet its standards and requirements.~~

~~(3) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.~~

~~(4) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.~~

~~(5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full~~

~~guardianship of the owner or manager.~~

~~(b) As used in this subsection (5), the following definitions apply:~~

~~(i) "Aged person" means a person as defined by department rule as aged.~~

~~(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.~~

~~(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.~~

~~(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as, including bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.~~

~~(B) The term does not include the administration of prescriptive medications.~~

~~(6) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.~~

~~(7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.~~

~~(8) "Capital expenditure" means:~~

~~(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or~~

~~(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.~~

~~(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.~~

~~(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.~~

~~(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological,~~

~~radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.~~

~~(12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.~~

~~(13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.~~

~~(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.~~

~~(15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.~~

~~(16) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.~~

~~(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.~~

~~(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.~~

~~(19) "Department" means the department of public health and human services provided for in 2-15-2201.~~

~~(20) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.~~

~~(21) "Federal acts" means federal statutes for the construction of health care facilities.~~

~~(22) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.~~

~~(23) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private~~

~~or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.~~

~~(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.~~

~~(24) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.~~

~~(25) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.~~

~~(26) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.~~

~~(27) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:~~

~~(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and~~

~~(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.~~

~~(28) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing~~

~~authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients.~~

~~(b) The term does not include critical access hospitals.~~

~~(29) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:~~

~~(a) an "infirmary--A" provides outpatient and inpatient care;~~

~~(b) an "infirmary--B" provides outpatient care only.~~

~~(30) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.~~

~~(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.~~

~~(31) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.~~

~~(32) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.~~

~~(33) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.~~

~~(34) "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.~~

~~(35) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.~~

~~(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations~~

providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(36) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(37) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(38) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(39) "Offer" means the representation by a health care facility that it can provide specific health services.

(40) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:

(i) serves either adjudicated or nonadjudicated youth;

(ii) charges a fee for its services; and

(iii) provides all or part of its services in the outdoors.

(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.

(41) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

(42) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization

~~that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.~~

~~(43) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.~~

~~(44) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.~~

~~(45) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.~~

~~(46) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.~~

~~(47) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.~~

~~(48) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.~~

~~(49) "Resident" means an individual who is in a long-term care facility or in a residential care facility.~~

~~(50) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.~~

~~(51) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.~~

~~(52) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.~~

~~(53) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.~~

~~(54) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.~~

~~(55) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.~~

~~(56) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient."~~

~~**Section 46.** Section 50-5-301, MCA, is amended to read:~~

~~**"50-5-301. When certificate of need is required -- definitions.** (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, the person may not initiate any of the following:~~

~~(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure that exceeds $1.5 million, other than to acquire an existing health care facility. The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant with respect to which an expenditure is made must be included in determining if the expenditure exceeds $1.5 million.~~

~~(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site to another, unless:~~

~~(i) the number of beds involved is 10 or less or 10% or less of the licensed beds, if fractional, rounded down to the nearest whole number, whichever figure is smaller, and no beds have been added or relocated during the 2 years prior to the date on which the letter of intent for the proposal is received;~~

~~(ii) a letter of intent is submitted to the department; and~~

~~(iii) the department determines that the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health care facilities plan;~~

~~(c) the addition of a health service that is offered by or on behalf of a health care facility that was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and that will result in additional annual operating and amortization expenses of $150,000 or more;~~

~~(d) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:~~

~~(i) the person submits the letter of intent required by 50-5-302(2); and~~

~~(ii) the department finds that the acquisition will not significantly increase the cost of care provided or~~

~~increase bed capacity;~~

~~(e) the construction, development, or other establishment of a health care facility that is being replaced or that did not previously exist, by any person, including another type of health care facility;~~

~~(f) the expansion of the geographical service area of a home health agency;~~

~~(g) the use of hospital beds in excess of five to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101;~~

~~(h) the provision by a hospital of services for home health care, long-term care, or inpatient chemical dependency treatment; or~~

~~(i) the construction, development, or other establishment of a facility for ambulatory~~ outpatient ~~surgical care through an outpatient center for surgical services in a county with a population of 20,000 or less according to the most recent federal census or estimate.~~

~~(2) For purposes of this part, the following definitions apply:~~

~~(a) "Health care facility" or "facility" means a nonfederal home health agency, a long-term care facility, or an inpatient chemical dependency facility. The term does not include:~~

~~(i) a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection (1)(h);~~

~~(ii) an office of a private physician, dentist, or other physical or mental health care professionals, including licensed addiction counselors; or~~

~~(iii) a rehabilitation facility or an outpatient center for surgical services.~~

~~(b) (i) "Long-term care facility" means an entity that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more individuals.~~

~~(ii) The term does not include residential care facilities, as defined in 50-5-101; community homes for persons with developmental disabilities, licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.~~

~~(3) This section may not be construed to require a health care facility to obtain a certificate of need for a nonreviewable service that would not be subject to a certificate of need if undertaken by a person other than~~

~~a health care facility."~~

Section 42. Section 50-32-314, MCA, is amended to read:

"50-32-314. Board to adopt rules for registration of ~~ambulatory~~ outpatient center for surgical ~~facilities~~ services. (1) The board shall~~, by October 1, 1999,~~ adopt rules to provide for the registration of ~~ambulatory~~ any outpatient center for surgical ~~facilities~~ services pursuant to this part. The rules must categorize ~~ambulatory~~ the outpatient center for surgical ~~facilities~~ services as a "distributor" pursuant to 50-32-101(12) or other category of registrant as determined by the board.

(2) If the board determines that ~~ambulatory~~ an outpatient center for surgical ~~facilities require~~ services requires the services of a pharmacist in order to be registered, the board shall allow ~~those facilities~~ that center to use the services of a consulting pharmacist to satisfy the obligation imposed by the board.

(3) This section does not affect any existing registration requirement ~~that~~ pursuant to this part for persons providing dangerous drugs to an ~~ambulatory~~ outpatient center for surgical ~~facility~~ services or persons administering dangerous drugs within or as the result of procedures performed at an ~~ambulatory~~ outpatient center for surgical ~~facility be registered pursuant to this part~~ services."

Section 43. Section 71-3-1111, MCA, is amended to read:

"71-3-1111. Short title. This part may be cited as the "Physician, Nurse, Physical Therapist, Occupational Therapist, ACUPUNCTURIST, Chiropractor, Dentist, Psychologist, Licensed Social Worker, Licensed Professional Counselor, Hospital, and ~~Ambulatory~~ Outpatient Center for Surgical ~~Facility~~ Services Lien Act"."

Section 44. Section 71-3-1112, MCA, is amended to read:

"71-3-1112. Purpose. The purpose of this part is to establish lien rights for physicians, nurses, physical therapists, occupational therapists, ACUPUNCTURISTS, chiropractors, dentists, hospitals, and ~~ambulatory~~ outpatient centers for surgical ~~facilities~~ services for the value of services rendered and products provided for the diagnosis and treatment of medical conditions and to establish lien rights for psychologists, licensed social workers, and licensed professional counselors for services rendered and products provided when a person receiving treatment:

(1) is injured through the fault or neglect of another; or

(2) is either insured or a beneficiary under insurance."

Section 45. Section 71-3-1113, MCA, is amended to read:

"71-3-1113. Definitions. As used in this part, the following definitions apply:

~~(1) "Ambulatory surgical facility" means a facility registered as provided in 50-32-314.~~

~~(2)~~(1) "Beneficiary" means a person entitled to insurance benefits.

~~(3)~~(2) "Dentist" means a person practicing dentistry as provided in 37-4-101.

~~(4)~~(3) "Insurance" means a contract ~~whereby~~ through which a person, the insurer, undertakes to indemnify another, the insured, or pay or provide a determinable amount or benefit upon determinable contingencies.

~~(5)~~(4) "Insurer" includes a health service corporation.

(5) "Outpatient center for surgical services" means a facility registered as provided in 50-32-314.

(6) "Person" means an individual, a corporation, an organization, or other legal entity."

Section 46. Section 71-3-1114, MCA, is amended to read:

"71-3-1114. Liens of physicians, nurses, physical therapists, occupational therapists, ACUPUNCTURISTS, chiropractors, dentists, hospitals, and ~~ambulatory~~ outpatient center for surgical ~~facilities~~ services and liens of psychologists, licensed social workers, and licensed professional counselors. (1) (a) Upon the required notice of a lien being given, there is a lien as provided in subsection (1)(b) whenever:

(i) a physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services renders services or provides products for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor renders services or provides products; and

(iii) the services rendered or products provided under subsection (1)(a)(i) or (1)(a)(ii) are rendered or provided to a person injured through the fault or neglect of another.

(b) The physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, hospital, ~~ambulatory~~ outpatient center for surgical ~~facility~~ services, psychologist, licensed social worker, or licensed professional counselor has a lien for the value of services rendered or products provided on:

(i) any claim or cause of action that the injured person or the injured person's estate or successors may have for injury, disease, or death;

(ii) any judgment that the injured person or the estate or successors may obtain for injury, disease, or

death; and

(iii) all money paid in satisfaction of the judgment or in settlement of the claim or cause of action.

(2) (a) If a person is an insured or a beneficiary under insurance that provides coverage in the event of injury or disease, there is a lien as provided in subsection (2)(b) upon required notice of a lien being given by:

(i) a physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services for the value of services rendered or products provided for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor for services rendered or products provided.

(b) The lien is on all proceeds or payments, except payments for property damage, payable by the insurer.

(3) A physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, hospital, ~~ambulatory~~ outpatient center for surgical ~~facility~~ services, psychologist, licensed social worker, or licensed professional counselor claiming a lien under this part is not liable for attorney fees and costs incurred by the injured person, the injured person's estate or successors, or a beneficiary in connection with obtaining payments or benefits subject to a lien under this part. The lien of an attorney provided for in 37-61-420 has priority over a lien created by this part."

Section 47. Section 71-3-1115, MCA, is amended to read:

"71-3-1115. Notice of lien. (1) A physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services claiming a lien shall serve written notice upon the person and upon the insurer, if any, against whom liability for injury, disease, counseling service, or death is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed.

(2) A physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services claiming a lien upon proceeds or payments payable by an insurer shall serve written notice upon the insurer against whom the lien is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed."

Section 48. Section 71-3-1117, MCA, is amended to read:

"71-3-1117. Liability for failure to recognize lien. If any insurer or person, after receiving notice of a lien, makes payment on account of injury, disease, counseling service, or death and the amount of the lien claimed by any physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services has not been paid, the insurer or person is liable to the physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services for the reasonable value of the services."

Section 49. Section 71-3-1118, MCA, is amended to read:

"71-3-1118. Applicability. (1) Except as provided in subsection (2), this part does not apply to compensation awarded to workers for injury, disease, or death pursuant to the Workers' Compensation Act.

(2) This part applies to all payments awarded for medical, therapy, ACUPUNCTURE, chiropractic, dentistry, counseling, and hospital services pursuant to the acts referred to in subsection (1).

(3) This part does not apply to any benefits payable under:

(a) a policy of life insurance or group life insurance;

(b) a contract of disability insurance, except benefits payable in reimbursement for services rendered by a physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services; or

(c) an annuity contract or to pension benefits payable under a qualified pension plan."

NEW SECTION. **Section 50. Repealer.** Sections 37-60-315 and 37-60-406, MCA, are repealed.

NEW SECTION. **Section 51. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 37, chapter 65, and the provisions of Title 37, chapter 65, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 37, chapter 69, and the provisions of Title 37, chapter 69, apply to [section 2].

(3) [Section ~~24~~ 23] is intended to be codified as an integral part of Title 37, chapter 47, and the provisions of Title 37, chapter 47, apply to [section ~~24~~ 23].

(4) [Section ~~25~~ 24] is intended to be codified as an integral part of Title 37, chapter 51, part 3, and the provisions of Title 37, chapter 51, part 3, apply to [section ~~25~~ 24].

NEW SECTION. **Section 52. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

- END -

SENATE BILL NO. 153

INTRODUCED BY V. COCCHIARELLA

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PROFESSIONAL AND OCCUPATIONAL LICENSING LAWS; CREATING EMERITUS STATUS FOR ARCHITECTS; CREATING A RETIREMENT LICENSE FOR PLUMBERS; REVISING THE BOARD OF REALTY REGULATION; REVISING THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; CLARIFYING THE DEFINITION OF "LICENSE"; PROVIDING BOARDS WITH PERMISSION TO REQUIRE STATE, REGIONAL, OR NATIONAL CERTIFICATION; EXPANDING THE UNPROFESSIONAL CONDUCT DESCRIPTION; ADDING ELEVATOR CONTRACTORS, MECHANICS, AND INSPECTORS TO THOSE COVERED BY THE UNPROFESSIONAL CONDUCT STATUTE; ADDING NATUROPATHIC PHYSICIAN, PHYSICIAN ASSISTANT, AND OPTOMETRIST TO DEFINITIONS RELATING TO NURSING; REMOVING THE OATH REQUIREMENT TO APPLY FOR A LICENSE AS A NURSE; CLARIFYING APPLICATION REQUIREMENTS FOR OPTOMETRISTS; CLARIFYING THE APPLICATION PROCESS FOR SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS; CLARIFYING TRAINEE LICENSE TERMS FOR HEARING AID DISPENSERS; REVISING TERMS FOR A VETERINARY LICENSE; REVISING RULEMAKING AUTHORITY FOR THE BOARD OF ALTERNATIVE HEALTH CARE; CLARIFYING LICENSING PROCEDURE FOR NATUROPATHIC PHYSICIANS; PROHIBITING STUDENT PRACTITIONERS OF RESPIRATORY CARE FROM RECEIVING REMUNERATION; REVISING DISTRIBUTION OF CERTAIN LICENSEE FEES FOR OUTFITTERS; CLARIFYING CONDITIONS FOR DENYING, SUSPENDING, OR REVOKING AN OUTFITTER'S, GUIDE'S, OR PROFESSIONAL GUIDE'S LICENSE; REQUIRING PUBLICATION OF A LIST OF LICENSED OUTFITTERS; PROVIDING PENALTIES FOR NONCOMPLIANCE BY REAL ESTATE BROKERS OR PROPERTY MANAGERS WITH TRUST ACCOUNT PROVISIONS; CREATING ENDORSEMENT PROVISIONS FOR A SUPERVISING REAL ESTATE BROKER; CREATING A TEMPORARY LICENSE FOR ELEVATOR INSPECTORS; REVISING THE NAME OF AMBULATORY SURGICAL FACILITIES; AMENDING SECTIONS 2-15-1757, 2-15-1781, 25-1-1104, 33-36-103, 37-1-130, 37-1-131, 37-1-302, 37-1-401, 37-1-410, 37-8-102, 37-8-405, 37-8-415, 37-10-302, 37-15-302, 37-16-405, 37-18-306, 37-26-201, 37-26-403, 37-28-201, 37-47-318, 37-47-341, 37-51-102, 37-51-301, 37-51-302, 37-60-101, 37-60-103, 37-60-202, 37-60-301, 37-60-302, 37-60-303, 37-60-304, 37-60-309, 37-60-310, 37-60-314, 37-60-402, 37-60-403, 37-60-409, 37-73-208, 50-4-504, 50-4-605, 50-5-101, 50-5-301, 50-32-314, 71-3-1111, 71-3-1112, 71-3-1113, 71-3-1114, 71-3-1115, 71-3-1117, AND 71-3-1118, MCA; AND

REPEALING SECTIONS 37-60-315 AND 37-60-406, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Emeritus status.** (1) A licensee who no longer practices architecture may apply to the department for emeritus status.

(2) Upon receiving an application for emeritus status accompanied by the fee established by the board, the department shall issue a license of emeritus status to the applicant and record the applicant's name in the appropriate database as an emeritus licensee, along with the date on which the licensee received emeritus status.

(3) An emeritus licensee may retain but may not use the licensee's seal and may not practice architecture.

(4) The department shall reissue an active license to an emeritus licensee who pays all application fees, meets all current requirements for licensure, and demonstrates to the board's satisfaction that for the 2 years preceding the application for active licensure, the applicant has met requirements set by the board for maintaining professional competence.

NEW SECTION. **Section 2. License of retirement status.** (1) A licensee who no longer practices plumbing may apply to the department for retirement status.

(2) Upon receiving an application for retirement status accompanied by the fee established by the board, the department shall issue a license of retirement status to the applicant and record the applicant's name in the appropriate database as a holder of a license of retirement status, along with the date on which the licensee received retirement status.

(3) A license of retirement status does not allow a holder to practice plumbing under this chapter.

(4) The department shall reissue an active license to a holder of a license of retirement status who pays the appropriate active license renewal fee.

Section 3. Section 2-15-1757, MCA, is amended to read:

"2-15-1757. Board of realty regulation. (1) There is a board of realty regulation.

(2) The board consists of ~~five~~ seven members appointed by the governor with the consent of the senate. ~~Three~~ Five members must be licensed real estate brokers ~~or~~, salespeople, or property managers who are actively

engaged in the real estate business as a broker ~~or~~, a salesperson, or a property manager in this state. Two members must be representatives of the public who are not state government officers or employees and who are not engaged in business as a real estate broker, ~~or~~ a salesperson, or a property manager. The members must be residents of this state.

(3) Not more than ~~three~~ five members, including the presiding officer, may be from the same political party.

(4) The members shall serve staggered terms of 4 years. A member may not serve more than two terms or any portion of two terms.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 2-15-1781, MCA, is amended to read:

"2-15-1781. Board of private security ~~patrol officers and investigators~~. (1) There is a board of private security ~~patrol officers and investigators~~.

(2) The board consists of seven voting members appointed by the governor with the consent of the senate. The members shall represent:

(a) one contract security company or proprietary security organization, as defined by 37-60-101;

(b) one ~~proprietary security organization~~ electronic security company, as defined by 37-60-101;

(c) one city police department;

(d) one county sheriff's office;

(e) one member of the public;

(f) one member of the peace officers' standards and training advisory council; and

(g) a licensed private investigator.

(3) Members of the board must be at least 25 years of age and have been residents of this state for more than 5 years.

(4) The appointed members of the board shall serve for a term of 3 years. The terms of board members must be staggered.

(5) The governor may remove a member for misconduct, incompetency, neglect of duty, or unprofessional or dishonorable conduct.

(6) A vacancy on the board must be filled in the same manner as the original appointment and may only be for the unexpired portion of the term.

(7) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 5. Section 25-1-1104, MCA, is amended to read:

"25-1-1104. Handbook for process servers. (1) The department of labor and industry shall publish a handbook for process servers and levying officers.

(2) Each person who applies to the clerk of the district court of any county for registration as a process server shall demonstrate that the person has passed an examination based on the handbook and administered by the board of private security ~~patrol officers and investigators~~ provided for in 2-15-1781.

(3) The department of labor and industry may charge a reasonable examination fee to cover the costs of publishing the handbook and administering the examination provided for in this section."

Section 6. Section 33-36-103, MCA, is amended to read:

"33-36-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Closed plan" means a managed care plan that requires covered persons to use only participating providers under the terms of the managed care plan.

(2) "Combination plan" means an open plan with a closed component.

(3) "Covered benefits" means those health care services to which a covered person is entitled under the terms of a health benefit plan.

(4) "Covered person" means a policyholder, subscriber, or enrollee or other individual participating in a health benefit plan.

(5) "Department" means the department of public health and human services established in 2-15-2201.

(6) "Emergency medical condition" means a condition manifesting itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in any of the following:

(a) the covered person's health would be in serious jeopardy;

(b) the covered person's bodily functions would be seriously impaired; or

(c) a bodily organ or part would be seriously damaged.

(7) "Emergency services" means health care items and services furnished or required to evaluate and treat an emergency medical condition.

(8) "Facility" means an institution providing health care services or a health care setting, including but not limited to a hospital, medical assistance facility, or critical access hospital, as defined in 50-5-101, or other licensed inpatient center, an ~~ambulatory surgical or treatment center~~ outpatient center for surgical services or other outpatient treatment center, a skilled nursing center, a residential treatment center, a diagnostic, laboratory,

an imaging center, or a rehabilitation or other therapeutic health setting.

(9) "Health benefit plan" means a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(10) "Health care professional" means a physician or other health care practitioner licensed, accredited, or certified pursuant to the laws of this state to perform specified health care services consistent with state law.

(11) "Health care provider" or "provider" means a health care professional or a facility.

(12) "Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

(13) "Health carrier" means an entity subject to the insurance laws and rules of this state that contracts, offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a disability insurer, health maintenance organization, or health service corporation or another entity providing a health benefit plan.

(14) "Intermediary" means a person authorized to negotiate, execute, and be a party to a contract between a health carrier and a provider or between a health carrier and a network.

(15) "Managed care plan" means a health benefit plan that either requires or creates incentives, including financial incentives, for a covered person to use health care providers managed, owned, under contract with, or employed by a health carrier, but not preferred provider organizations or other provider networks operated in a fee-for-service indemnity environment.

(16) "Medically necessary" means services, medicines, or supplies that are necessary and appropriate for the diagnosis or treatment of a covered person's illness, injury, or medical condition according to accepted standards of medical practice and that are not provided only as a convenience.

(17) "Network" means the group of participating providers that provides health care services to a managed care plan.

(18) "Open plan" means a managed care plan other than a closed plan that provides incentives, including financial incentives, for covered persons to use participating providers under the terms of the managed care plan.

(19) "Participating provider" means a provider who, under a contract with a health carrier or with the health carrier's contractor, subcontractor, or intermediary, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly from the health carrier.

(20) "Primary care professional" means a participating health care professional designated by the health

carrier to supervise, coordinate, or provide initial care or continuing care to a covered person and who may be required by the health carrier to initiate a referral for specialty care and to maintain supervision of health care services rendered to the covered person.

(21) "Quality assessment" means the measurement and evaluation of the quality and outcomes of medical care provided to individuals, groups, or populations.

(22) "Quality assurance" means quality assessment and quality improvement.

(23) "Quality improvement" means an effort to improve the processes and outcomes related to the provision of health care services within a health plan."

Section 7. Section 37-1-130, MCA, is amended to read:

"37-1-130. Definitions. As used in this part, the following definitions apply:

(1) "Administrative fee" means a fee established by the department to cover the cost of administrative services as provided for in 37-1-134.

(2) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(3) "Board fee" means:

(a) a fee established by the board to cover program area costs as provided in 37-1-134; and

(b) any other legislatively prescribed fees specific to boards and department programs.

(4) "Department" means the department of labor and industry established in 2-15-1701.

(5) "Department program" means a program administered by the department pursuant to this title and not affiliated with a board.

(6) "Expired license" means a license that is not reactivated within the period of 45 days to 2 years after the renewal date for the license.

(7) "Lapsed license" means a license that is not renewed by the renewal date and that may be reactivated within the first 45-day period after the renewal date for the license.

(8) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation<u>, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration</u>.

(9) "Terminated license" means a license that is not renewed or reactivated within 2 years of the license lapsing."

Section 8. Section 37-1-131, MCA, is amended to read:

"37-1-131. Duties of boards -- quorum required. (1) A quorum of each board within the department shall:

~~(1)~~(a) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;

~~(2)~~(b) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

~~(3)~~(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection ~~(2)~~ (1)(b), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

~~(4)~~(d) pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

~~(5)~~(e) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

~~(6)~~(2) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(3) A board that requires continuing education or continued state, regional, or national certification for licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of this subsection for the renewal cycle.

~~(7)~~(4) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure, as provided in 37-1-306, or require continued state, regional, or national certification for licensure. ~~If~~ Except as provided in subsection (3), if the board or department

requires continuing education or continued state, regional, or national certification for continued licensure, the board or department may not audit or ~~verify~~ require proof of continuing education or continued state, regional, or national certification requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits after the lapsed date of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement ~~after the renewal period closes~~.

~~(8)~~(5) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board."

Section 9. Section 37-1-302, MCA, is amended to read:

"37-1-302. Definitions. As used in this part, the following definitions apply:

(1) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3) "Department" means the department of labor and industry.

(4) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

(5) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the board;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether a board should seek an injunction.

(6) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

(7) "Profession" or "occupation" means a profession or occupation regulated by a board."

Section 10. Section 37-1-401, MCA, is amended to read:

"37-1-401. Uniform regulation for licensing programs without boards -- definitions. As used in this part, the following definitions apply:

(1) "Complaint" means a written allegation filed with the department that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the department;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether the department should seek an injunction.

(4) "License" means permission in the form of a license, permit, endorsement, certificate, recognition, or registration granted by the state of Montana to engage in a business activity or practice at a specific level in a profession or occupation governed by:

(a) Title 37, chapter 35, 72, 73, or 76; or

(b) Title 50, chapter 39, 74, or 76.

(5) "Profession" or "occupation" means a profession or occupation regulated by the department under the provisions of:

(a) Title 37, chapter 35, 72, 73, or 76; or

(b) Title 50, chapter 39, 74, or 76."

Section 11. Section 37-1-410, MCA, is amended to read:

"37-1-410. Unprofessional conduct. (1) The following is unprofessional conduct for a licensee or license applicant in a profession or occupation governed by this chapter:

~~(1)~~(a) being convicted, including a conviction following a plea of nolo contendere and regardless of a pending appeal, of a crime relating to or committed during the course of practicing the person's profession or occupation or involving violence, the use or sale of drugs, fraud, deceit, or theft;

~~(2)~~(b) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

~~(3)~~(c) committing fraud, misrepresentation, deception, or concealment of a material fact in applying for

or assisting in securing a license or license renewal or in taking an examination required for licensure;

~~(4)~~(d) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

~~(5)~~(e) making a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

~~(6)~~(f) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

~~(7)~~(g) ~~the~~ receiving a denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal or under judicial review or has been satisfied.

~~(8)~~(h) ~~failure~~ failing to comply with a term, condition, or limitation of a license by final order of the department;

~~(9)~~(i) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

~~(10)~~(j) misappropriating property or funds from a client or workplace or failing to comply with the department's rule regarding the accounting and distribution of a client's property or funds;

~~(11)~~(k) ~~interference~~ interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts, failure to respond to department inquiries regarding a complaint against the licensee or license applicant, or the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action or use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

~~(12)~~(l) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice the profession or occupation by use of the licensee's license.

(2) For the purposes of Title 37, chapters 72 and 73, and Title 50, chapters 74 and 76, the following additional practices are considered unprofessional conduct:

(a) addiction to or dependency on alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32;

(b) use of alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally;

(c) conduct that does not meet generally accepted standards of practice. A certified copy of a judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring within the scope of practice and the course of the practice is considered conclusive evidence of, but is not needed to prove, conduct that does not meet generally accepted standards."

Section 12. Section 37-8-102, MCA, is amended to read:

"37-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202.

(2) "Board" means the board of nursing provided for in 2-15-1734.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) "Medication aide" means a person who in an assisted living facility uses standardized procedures in the administration of drugs, as defined in 37-7-101, that are prescribed by a physician, an advanced practice registered nurse with prescriptive authority, a dentist, an osteopath, or a podiatrist authorized by state law to prescribe drugs.

(5) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a junior college, college, or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical institution or junior college.

(6) "Practice of nursing" embraces the practice of practical nursing and the practice of professional nursing.

(7) (a) "Practice of practical nursing" means the performance of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. The practice of practical nursing uses standardized procedures in the observation and care of the ill, injured, and infirm, in the maintenance of health, in action to safeguard life and health, and in the administration of medications and treatments prescribed by a physician, naturopathic physician, physician assistant, optometrist, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and

treatments. These services are performed under the supervision of a registered nurse or a physician, naturopathic physician, physician assistant, optometrist, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(b) These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

(8) "Practice of professional nursing" means the performance of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health, the prevention, casefinding, and management of illness, injury, or infirmity, and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, naturopathic physicians, physician assistants, optometrist, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (8):

(a) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(b) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals."

Section 13. Section 37-8-405, MCA, is amended to read:

"37-8-405. Professional nursing -- qualifications of applicants for license. An applicant for a license to practice as a registered professional nurse shall submit to the department written evidence~~, verified by oath,~~ that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) has completed the basic professional curriculum in an approved school of nursing and holds a diploma ~~therefrom~~ from that school; and

(3) meets other qualification requirements the board prescribes."

Section 14. Section 37-8-415, MCA, is amended to read:

"37-8-415. Licensed practical nursing -- qualifications of applicants. An applicant for a license to practice as a licensed practical nurse shall submit to the board written evidence~~, verified by oath,~~ that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) is a graduate of an approved practical nursing education program that is authorized to prepare persons for licensure as practical nurses; and

(3) meets other qualification requirements the board prescribes in its rules."

Section 15. Section 37-10-302, MCA, is amended to read:

"37-10-302. Qualifications -- application. (1) The board shall adopt rules relative to and governing the qualifications of applicants for licensure as optometrists.

(2) A person is not eligible to receive a license unless that person is ~~18 years of age or older and~~ of good moral character.

(3) A person is not eligible to receive a license unless that person has graduated from an accredited ~~high school and from a~~ school of optometry in which the practice and science of optometry is taught in a course of study that is accredited by the international association of boards of examiners in optometry.

(4) ~~A person desiring~~ An applicant for a license shall file a completed application on a form provided by the department and pay a fee prescribed by the board."

Section 16. Section 37-15-302, MCA, is amended to read:

"37-15-302. Application forms. ~~Application~~ An application for examination for licensing a speech-language pathologist or audiologist ~~shall~~ must be made upon forms prescribed by the ~~board~~ department."

Section 17. Section 37-16-405, MCA, is amended to read:

"37-16-405. Trainee license. (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take a practical examination may apply to the board for a trainee license.

(2) On receiving an application under subsection (1), accompanied by a fee fixed by the board and verification that the applicant has passed the written portion of the examination with a passing score as determined by board rule, the board shall issue a trainee license that entitles the applicant to engage in a 180-day

training period during which the applicant:

(a) is required to pass the practical examination administered by the board before being issued a hearing aid dispenser's license; and

(b) shall work under the direct supervision of the sponsoring licensed hearing aid dispenser. During this time the applicant may do the testing necessary for proper selection and fitting of hearing aids and related devices and make necessary impressions. However, the delivery and final fitting of the hearing aid and related devices must be made by the trainee and the supervisor.

(3) The training period must consist of a continuous 180-day term. Any break in training requires application for another trainee license under rules that the board may prescribe.

(4) A trainee license may not be issued unless the board has on file an unrevoked statement from a qualified licensed hearing aid dispenser accepting responsibility for the trainee. Every licensed hearing aid dispenser supervising a trainee license holder shall submit a report every 90 days of the trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible for all hearing aid fittings of the trainee. A supervisor may terminate any responsibilities to the trainee by mailing by certified mail written notice to the board and the trainee.

(5) If a person who holds a trainee license takes and fails to pass the practical examination ~~during the training period, the board may authorize the department to renew the trainee license for a period of 180 days, during which the provisions of subsection (2)(b) apply. More than one renewal is not permitted~~, the trainee license expires, and the person may not practice as a trainee.

(6) A person licensed as an audiologist under the provisions of Title 37, chapter 15, or a person practicing pursuant to 37-1-305 is exempt from the 180-day training period but is required to pass the examinations prescribed in this chapter.

(7) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee as if the conduct were the licensee's own.

(8) For the purposes of this section, "direct supervision" means the direct and regular observation and instruction of a trainee by a licensed hearing aid dispenser who is available at the same location for prompt consultation and treatment."

Section 18. Section 37-18-306, MCA, is amended to read:

"37-18-306. Display of license and certificate. A person may not practice veterinary medicine in this

state without possessing and displaying prominently in ~~his~~ the person's principal office ~~a license and~~ a current and valid ~~certificate of registration~~ license issued under this part."

Section 19. Section 37-26-201, MCA, is amended to read:

"37-26-201. Powers and duties of board. The board shall:

(1) adopt rules necessary or proper to administer and enforce this chapter;

(2) adopt rules that specify the scope of practice of naturopathic medicine stated in 37-26-301, that are consistent with the definition of naturopathic medicine provided in 37-26-103, and that are consistent with the education provided by approved naturopathic medical colleges;

(3) adopt rules that endorse equivalent licensure examinations of another state or territory of the United States, the District of Columbia, or a foreign country and that may include licensure by reciprocity;

(4) adopt rules that set nonrefundable fees for application, and licensure;

(5) approve naturopathic medical colleges as defined in 37-26-103;

(6) issue certificates of specialty practice;

(7) adopt rules that, in the discretion of the board, appropriately restrict licenses to a limited scope of practice of naturopathic medicine, which may exclude the use of minor surgery allowed under 37-26-301; and

(8) adopt rules that contain the natural substance formulary list created by the alternative health care formulary committee provided for in 37-26-301~~; and~~

~~(9) adopt rules to implement the provisions in 37-1-138~~."

Section 20. Section 37-26-403, MCA, is amended to read:

"37-26-403. Application for licensure ~~-- examination -- temporary license~~. (1) A person who desires a license to practice naturopathic medicine in Montana shall apply to the department.

(2) The application must be accompanied by the license fees, the application fees, and the documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by 37-26-402. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the necessary qualifications and whether the applicant has committed unprofessional conduct that would be a basis for licensure denial.

(3) At the board's request, the applicant shall provide necessary authorizations for the release of records and information pertinent to the department's investigation.

~~(2) A person who applies for licensure but who has not passed a licensure examination prescribed or~~

~~endorsed by the board shall apply to the board for authorization to take the prescribed licensure examination. If the board finds that all other qualifications for licensure except that of examination have been met, the board shall authorize the applicant to take the licensure examination.~~"

Section 21. Section 37-28-201, MCA, is amended to read:

"37-28-201. License required -- exceptions -- respiratory care not ~~the~~ practice of medicine. (1) Except as otherwise provided in this chapter, a person may not practice respiratory care or represent to the public that the person is a respiratory care practitioner unless licensed under the provisions of this chapter.

(2) This chapter does not prohibit:

(a) the practice of respiratory care that is an integral part of study by a student respiratory care practitioner;

(b) self-care by a patient or the gratuitous care by a friend or family member who does not purport to be a respiratory care practitioner; or

(c) respiratory care rendered in the course of an emergency.

(3) This chapter is not intended to limit, preclude, or interfere with the practice of other persons and health care providers licensed by the appropriate agencies of the state of Montana.

(4) Student practitioners providing respiratory care may not receive payment for their services.

(5) This chapter may not be construed to permit the practice of medicine."

Section 22. Section 37-47-318, MCA, is amended to read:

"37-47-318. Fees in addition to annual license fee -- allocation. (1) In addition to the fees required in 37-47-306 for an outfitter providing hunting services, the following fees apply:

(a) An outfitter shall pay an annual fee of $2 for each client served.

(b) An outfitter who is granted a net client hunter use expansion shall pay a fee of $500 for each new client added to that outfitter's operations plan.

(c) (i) An outfitter who operates hunting camps in more than one department of fish, wildlife, and parks administrative region shall pay an annual fee of $5,000 for each camp that is located beyond a 100-mile radius of the outfitter's base of operations and that is in an administrative region other than the region containing the outfitter's base of operations.

(ii) A fee is not required for the following:

~~(i)~~(A) an outfitter's base of operations camp;

~~(ii)~~(B) camps established before January 1, 1999;

~~(iii)~~(C) camps established on public land when use is directly regulated by public land use policies; or

~~(iv)~~(D) camps on corporate timberlands where public access is not restricted.

(d) An outfitter who desires a net client hunter use expansion shall pay a nonrefundable fee of $2,000 for each expansion request.

(2) Fees collected pursuant to this section must be expended by the board, pursuant to the authority in 37-47-306, and by the department of fish, wildlife, and parks, pursuant to the authority in 87-1-601, and used to fund administrative costs related to implementation of this chapter. The fees collected must be allocated as follows:

(a) Revenue generated by the $2 fee imposed in subsection (1)(a), the $500 fee imposed in subsection (1)(b), and the $2,000 fee imposed in subsection (1)(d) must be split equally between the board and the department of fish, wildlife, and parks.

~~(b) Revenue generated by the $500 fee imposed in subsection (1)(b) must be allocated between the board and the department of fish, wildlife, and parks in the following order:~~

~~(i) the amount necessary to cover the department's administrative expenses that exceed the revenue generated by subsection (2)(a); and~~

~~(ii) the remaining amount to be deposited in the state special revenue fund to the credit of the board.~~

~~(c)~~(b) Revenue generated by the $5,000 fee imposed in subsection (1)(c) must be deposited in the state special revenue fund to the credit of the board.

~~(d) Revenue generated by the $2,000 fee imposed in subsection (1)(d) must be split equally between the board and the department of fish, wildlife, and parks.~~"

Section 23. Section 37-47-341, MCA, is amended to read:

"37-47-341. Grounds for denial, suspension, or revocation of license. A license or right to apply for and hold a license issued under this part may be denied, suspended, or revoked or other disciplinary conditions may be applied upon any of the following grounds:

(1) having ceased to meet all of the qualifications for holding a license, as required under this chapter and rules adopted pursuant to this chapter;

(2) fraud or deception in procuring a license;

(3) fraudulent, untruthful, or misleading advertising;

(4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in which the

sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law. ~~A person may not apply for or hold an outfitter's, guide's, or professional guide's license during any period of time in which a sentence for a felony has been deferred or suspended.~~

(5) one conviction or bond forfeiture as to a violation of the fish and game or outfitting laws or regulations of any state or the United States;

(6) a substantial breach of a contract with a participant provided that the breach is established as a matter of final judgment in a court of law;

(7) the willful employment of or contracting with an unlicensed guide or professional guide by an outfitter;

(8) negligence or misconduct while acting as an outfitter, guide, or professional guide that causes an accident or injury to the person or property of a participant;

(9) misconduct as defined by board rule; or

(10) any violation of this chapter or a rule adopted pursuant to this chapter."

NEW SECTION. **Section 24. Publication of license information.** (1) The department shall prepare and publish an information pamphlet that contains the names and addresses of all licensed outfitters.

(2) The pamphlet described in subsection (1) must be available for free distribution as early as possible each calendar year but not later than the second Friday in March of each year.

(3) The pamphlet must contain the names, license numbers, and addresses of only those outfitters who have a currently valid license.

NEW SECTION. **Section 25. Penalty for failure to comply with trust account requirements.** (1) An employee of the department may issue a citation to a broker or property manager responsible for maintenance of a trust account for failure to comply with trust account maintenance requirements as provided by rule under 37-1-319(4).

(2) The citation must include:

(a) the time and date on which the citation is issued;

(b) the name, title, mailing address, and signature of the person issuing the citation;

(c) reference to the statute or rule violated;

(d) the name, title, and mailing address of the person to whom the citation is being sent, along with information explaining the procedure for the person receiving the citation to follow to pay the fine or dispute the violation; and

(e) the amount of the applicable fine.

(3) The applicable civil fine for failure to comply with trust account maintenance requirements is $50 for each cited violation.

(4) The person who issues the citation is authorized to collect the fine and deposit the proceeds in the state special revenue account to the credit of the board.

(5) The person who is issued a citation may pay the fine or file a written dispute of the violation with the board within 5 business days of the date of issuance.

(6) A person who refuses to sign and accept a citation but who does not file a written dispute of the violation is demonstrating unprofessional conduct.

Section 26. Section 37-51-102, MCA, is amended to read:

"37-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.

(3) "Board" means the board of realty regulation provided for in 2-15-1757.

(4) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in

connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson the name of a prospective buyer or seller of real property; or

(g) advertises or represents to the public that the individual is engaged in any of the activities referred to in subsections (4)(a) through (4)(f).

(5) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who has entered into an agreement to acquire an interest in real property. The term includes tenants or potential tenants with respect to leases or rental agreements of real property.

(6) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

(7) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

(8) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a buyer.

(9) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(10) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written authorization, as provided in 37-51-314. An in-house buyer or seller agent designate may not be considered a dual agent.

(11) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark,

trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(12) "In-house buyer agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for other than the buyer with respect to the designated transaction.

(13) "In-house seller agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a seller for a designated transaction and who may not be considered to be acting for other than the seller with respect to the designated transaction.

(14) "Listing agreement" means a written agreement between a seller and broker for the sale of real estate, with the terms and conditions set out in the agreement.

(15) "Negotiations" means:

(a) efforts to act as an intermediary between parties to a real estate transaction;

(b) facilitating and participating in contract discussions;

(c) completing forms for offers, counteroffers, addendums, and other writings; and

(d) presenting offers and counteroffers.

(16) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(17) "Property manager" includes a person who for a salary, commission, or compensation of any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602.

(18) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(19) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale, exchange, or lease of an interest in real estate and includes all communication, interposition, advisement, negotiation, and contract development and closing.

(20) "Salesperson" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(21) "Seller" means a person who has entered into a listing agreement to sell real estate and includes landlords who have an interest in or are a party to a lease or rental agreement.

(22) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

(23) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

(24) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in this chapter, a relationship other than that of a statutory broker.

(25) "Supervising broker" means a licensed broker with whom a licensed salesperson is associated, either directly, indirectly, regularly, or occasionally, to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(26) "Supervising broker endorsement" means an endorsement to a broker license that is required of any licensed broker who supervises licensed salespersons performing real estate activity."

Section 27. Section 37-51-301, MCA, is amended to read:

"37-51-301. License required -- limited to persons. (1) It is unlawful for a person to engage in or conduct, directly or indirectly, or to advertise or ~~hold himself out~~ represent to the public as engaging in or conducting the business or acting in the capacity of a real estate broker or a real estate salesperson within this state without a license as a broker or salesperson or otherwise complying with this chapter.

(2) It is unlawful for a person to supervise licensed salespersons or to act in the capacity of a supervising broker unless the person has a valid and active Montana broker license and a supervising broker endorsement.

~~(2)~~(3) Corporations, partnerships, and associations may not be licensed under this chapter. A corporation or a partnership may act as a licensee if every corporate officer and every partner performing the functions of a licensee is licensed under this chapter. All officers of a corporation or all members of a partnership acting as a licensee are in violation of this chapter unless there is full compliance with this subsection."

Section 28. Section 37-51-302, MCA, is amended to read:

"37-51-302. Broker or salesperson license -- qualifications of applicant -- supervising broker

endorsement. (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesperson in a manner ~~as to safeguard~~ that safeguards the interests of the public.

(2) An applicant for a broker's license:

(a) must be at least 18 years of age;

(b) must have graduated from an accredited high school or completed an equivalent education as determined by the board;

(c) must have been actively engaged as a licensed real estate salesperson for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesperson ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesperson because of conditions existing in the area where the applicant resides, the board may waive this experience requirement;

(d) shall file an application for a license with the department; and

(e) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours, in addition to those required to secure a salesperson's license, in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law, real estate finance, and related topics.

(3) The board shall require information it considers necessary from an applicant to determine honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesperson's license:

(i) must be at least 18 years of age;

(ii) must have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board;

(iii) shall file an application for a license with the department; and

(iv) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

(b) The application must be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the

broker will actively supervise and train the applicant during the period the requested license remains in effect.

(5) The department shall issue to each licensed broker and to each licensed salesperson a license and a pocket card in a form and size that the board prescribes.

(6) An applicant for a supervising broker endorsement shall meet the education and experience requirements established by the board by rule."

Section 29. Section 37-60-101, MCA, is amended to read:

"37-60-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Alarm response runner" means ~~any~~ an individual employed by an electronic security company, a contract security company, or a proprietary security organization to respond to security alarm system signals.

(2) "Armed" means an individual who at any time wears, carries, or possesses a firearm in the performance of professional duties.

~~(2)~~(3) "Armed carrier service" means any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

~~(3)~~(4) "Armed private investigator" means a private investigator who at any time wears, carries, or possesses~~, or has access to~~ a firearm in the performance of the individual's duties.

~~(4)~~(5) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, or carrier service guard~~, or alarm response runner~~ and who at any time wears or carries a firearm in the performance of the individual's duties.

~~(5)~~(6) "Armored car service" means any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

~~(6)~~(7) "Board" means the board of private security ~~patrol officers and investigators~~ provided for in 2-15-1781.

~~(7)~~(8) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.

~~(8)~~(9) "Contract security company" means any person who ~~installs or maintains a security alarm system,~~ undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the

performance of the details of the services rendered.

~~(9)~~(10) "Department" means the department of labor and industry provided for in 2-15-1701.

(11) "Electronic security company" means a person who installs, services, or maintains a security alarm system and who undertakes to hire, employ, and provide alarm response runners and security alarm installers on a contractual basis to another person who does not exercise direction and control over the performance of the services rendered.

(12) (a) "Fire investigator" means a person other than an individual identified in subsection (12)(b) who for any consideration:

(i) makes or agrees to make an investigation with reference to:

(A) a fire to identify evidence and determine cause of the fire; or

(B) accidents involving suspected negligence or arson for criminal or civil action;

(ii) testifies as an expert witness for investigations identified under this subsection (12); or

(iii) cooperates with law enforcement agencies in conducting fire investigations and collecting evidence relating to fires.

(b) The term does not mean an insurance adjuster, an individual designated as the state fire marshal under 2-15-2005, or a member of:

(i) a fire department as described in 7-3-1345;

(ii) law enforcement; or

(iii) an entity organized under Title 7, chapter 33.

(13) "Firearms course" means the course approved by the board and conducted by a firearms instructor.

(14) "Firearms instructor" means an individual who has been approved by the board to instruct firearms courses in the use of weapons.

~~(10)~~(15) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration ~~whatsoever~~ conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes ~~or wrongs committed or threatened~~ against the United States or any state or territory of the United States.

~~(11)~~(16) "Licensee" means a person licensed under this chapter.

~~(12)~~(17) "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law

offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work.

~~(13)~~(18) "Person" ~~includes any~~ means an individual, firm, company, association, organization, partnership, ~~and~~ or corporation.

~~(14)~~(19) "Private investigator" means a person other than an insurance adjuster who for any consideration ~~whatsoever~~ makes or agrees to make any investigation with reference to:

(a) crimes ~~or wrongs done or threatened~~ against the United States or any state or territory of the United States;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, ~~whereabouts~~ location, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for ~~fires,~~ libels, losses, accidents, or injury to persons or property; or

(e) ~~securing~~ gathering evidence to be used before any court, board, officer, or investigating committee.

~~(15)~~(20) "Private security guard" means an individual employed or assigned duties to protect a person or property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property or the direction of the movements of the public in public areas.

~~(16)~~(21) "Proprietary security organization" means any person who employs a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

~~(17) "Qualifying agent" means, in the case of a corporation, a corporate employee employed in a management capacity or, in the case of a partnership, a general or unlimited partner meeting the qualifications set forth in this chapter for the operation of a contract security company, proprietary security organization, or private investigator, whichever is applicable.~~

~~(18)~~(22) "Resident manager" means the person appointed to exercise direct supervision, control, charge, management, or operation of each branch office located in this state where the business of the licensee is conducted.

(23) "Security alarm installer" means an individual who installs, services, or maintains security alarm systems to detect and signal unauthorized intrusion, movement, break-in, or criminal acts and is employed by

an electronic security company.

~~(19)~~(24) (a) "Security alarm system" means an assembly of equipment and devices or a single device~~, such as a solid state unit that plugs directly into a 110-volt AC line, designed~~ or a portion of a system intended to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a ~~protected premises and to which signals police, private security guards, or alarm response runners are expected to respond~~ location.

(b) The term does not include ~~alarm systems and alarm~~ systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a ~~premises~~ location.

(25) "Security company" means an electronic security company, a proprietary security organization, or a contract security company.

~~(20)~~(26) "Street patrol service" means ~~any contract security company or proprietary security organization that uses foot patrols, motor vehicles, or any other means of transportation to maintain public order or detect criminal activities in public areas or thoroughfares~~ a person providing patrols by means of foot, vehicle, or other method of transportation using public street, thoroughfares, or property in the performance of the person's duties and responsibilities.

~~(21)~~(27) "Unarmed private investigator" means a private investigator who does not wear, carry, or possess~~, or have access to~~ a firearm in the performance of the individual's duties.

~~(22)~~(28) "Unarmed private security guard" means an individual who is employed by a contract security company or a proprietary security organization, whose duty or any portion of whose duty is that of a private security guard, armored car service guard, or alarm response runner, and who does not wear ~~or~~, carry, or possess a firearm in the performance of those duties."

Section 30. Section 37-60-103, MCA, is amended to read:

"37-60-103. Purpose. The purpose of this chapter is to increase the levels of integrity, competency, and performance of ~~private~~ security ~~personnel~~ companies and their employees who are required to be licensed, firearms instructors, fire investigators, and private investigators ~~in order~~ to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by ~~private~~ security ~~personnel~~ companies and their licensed employees, firearms instructors, fire investigators, or private investigators."

Section 31. Section 37-60-202, MCA, is amended to read:

"37-60-202. Rulemaking power. The board shall adopt and enforce rules:

(1) fixing the qualifications of resident managers, ~~qualifying agents,~~ licensees, and holders of identification cards, in addition to those prescribed in this chapter, necessary to promote and protect the public welfare;

(2) establishing, in accordance with 37-1-134, application fees for original ~~or renewal~~ licenses and identification cards, and providing for refunding of any fees;

(3) (a) ~~prohibiting~~ requiring approval of the board prior to the establishment of branch offices of any licensee~~, except a proprietary security organization, without approval by the board~~; and

(b) establishing qualification requirements and license fees for branch offices identified in subsection (3)(a);

(4) for the certification of private investigator ~~and~~, private security guard, security alarm installer, and alarm response runner training programs, including the certification of firearms training programs;

(5) for the licensure of firearms instructors;

(6) for the approval of weapons;

(7) requiring the maintenance of records;

(8) requiring licensees to file an insurance policy with the board; and

(9) providing for the issuance of probationary identification cards for private investigators and security alarm installers who do not meet the requirements for age, employment experience, ~~and~~ or written examination."

Section 32. Section 37-60-301, MCA, is amended to read:

"37-60-301. License required. (1) Except as provided in 37-60-105 ~~and 37-60-315~~, it is unlawful for any person to act as or perform the duties, as defined in 37-60-101, of a contract security company ~~or~~, a proprietary security organization, an electronic security company, a branch office, a private investigator, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard without having first obtained a license from the board. ~~Those persons licensed on April 18, 1983, shall retain their current licensure status and shall renew their licenses on the renewal date as prescribed by the department.~~

(2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that the person is licensed as ~~a private investigator,~~ a contract security company, a proprietary security organization, an electronic security company, a branch office, a private investigator, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard.

(3) A person appointed by the court as a confidential intermediary under 42-6-104 is not required to be licensed under this chapter. A person who is licensed under this chapter is not authorized to act as a confidential intermediary, as defined in 42-1-103, without meeting the requirements of 42-6-104.

(4) A person who knowingly engages an unlicensed ~~private investigator, private security guard, or~~ contract security company, proprietary security organization, electronic security company, branch office, private investigator, fire investigator, security alarm installer, alarm response runner, resident manager, certified firearms instructor, or private security guard is guilty of a misdemeanor punishable under 37-60-411."

Section 33. Section 37-60-302, MCA, is amended to read:

"37-60-302. ~~Qualifying agent and resident~~ Resident manager required ~~-- substitution~~. (1) Any ~~out-of-state~~ contract security company, electronic security company, or proprietary security organization that applies for a license under this chapter shall~~, before application to the board,~~ appoint for the duration of the license ~~a qualifying agent and~~ a resident manager. ~~Every qualifying agent and~~ Each resident manager shall satisfy the appropriate licensing requirements of this chapter.

(2) A separate resident manager must be appointed for each branch office located in this state, and the business of the applicant or licensee must be conducted under the resident manager's direct supervision and control.

(3) If a ~~qualifying agent or~~ resident manager for any reason ceases to perform the duties of a ~~qualifying agent or~~ resident manager on a regular basis, the licensee shall promptly notify the board of that fact ~~and of the name of a substitute individual, who shall apply to the board for continuation of the license. Pending application by and board action upon the application of the substitute, the board may suspend the license or extend it for a reasonable time~~."

Section 34. Section 37-60-303, MCA, is amended to read:

"37-60-303. License qualifications. (1) Except as provided in subsection (7)(a), an applicant for licensure under this chapter is subject to the provisions of this section and shall submit evidence under oath that the applicant:

(a) is at least 18 years of age;

(b) is a citizen of the United States or a legal, permanent resident of the United States;

(c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

(d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;

(e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;

(f) is of good moral character; and

(g) has complied with other experience qualifications as may be set by the rules of the board.

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard, security alarm installer, or alarm response runner shall:

(a) complete the ~~training~~ requirements of a ~~private security guard~~ training program certified by the board and provide, on a form prescribed by the board, written notice of satisfactory completion of the training; and

(b) fulfill other requirements as the board may by rule prescribe.

(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that the applicant:

(a) is at least 21 years of age;

(b) has at least a high school education or the equivalent;

(c) has not been dishonorably discharged from any branch of the United States military service; and

(d) has fulfilled any other requirements as the board may by rule prescribe.

(4) The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.

(5) An applicant who will wear, ~~or~~ carry, or possess a firearm in performance of the applicant's duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as the board may by rule prescribe.

(6) Except for an applicant subject to the provisions of subsection (7)(a), the board shall require a background investigation of each applicant for licensure under this chapter that includes a fingerprint check by the Montana department of justice and the federal bureau of investigation.

(7) (a) A firm, company, association, partnership, limited liability company, corporation, or other entity that intends to engage in business governed by the provisions of this chapter must be incorporated under the laws of this state or qualified to do business within this state and must be licensed by the board.

(b) Individual employees, officers, directors, agents, or other representatives of an entity described in subsection (7)(a) who engage in duties that are subject to the provisions of this part must be licensed pursuant to the requirements of this part."

Section 35. Section 37-60-304, MCA, is amended to read:

"37-60-304. Licenses -- application form and content. (1) ~~Except as provided in 37-60-303(7), an~~ An application for a license must be submitted to the department and accompanied by the application fee set by the board.

(2) An application must be made under oath and must include:

(a) the full name and address of the applicant;

(b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, an electronic security company, a branch office, a certified firearms instructor, a private investigator, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, or a private security guard;

(e) except for an applicant pursuant to 37-60-303(7)(a), one recent photograph of the applicant, of a type prescribed by the department, and one classifiable set of the applicant's fingerprints;

(f) a statement of the applicant's age and experience qualifications, except for an applicant pursuant to 37-60-303(7)(a); and

(g) other information, evidence, statements, or documents as may be prescribed by the rules of the board.

(3) The board shall verify the statements in the application ~~and the applicant's moral character~~.

(4) The submittal of fingerprints is a prerequisite to the issuance of a license, except under 37-60-303(7)(a), by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation."

Section 36. Section 37-60-309, MCA, is amended to read:

"37-60-309. Form of license and identification cards. The license~~,~~ and identification card~~, and temporary identification card for temporary security guards~~ must be in a form determined by the board."

Section 37. Section 37-60-310, MCA, is amended to read:

"37-60-310. Display of license and identification card. (1) A license must at all times be posted in a conspicuous place in the principal place of business of the licensee.

(2) A holder of an identification card ~~or a temporary identification card~~ shall carry the card while

performing the cardholder's duties. A peace officer of this state or any of its political subdivisions may request to see the card at any reasonable time, and the card must be shown."

Section 38. Section 37-60-314, MCA, is amended to read:

"37-60-314. Nontransferability of license -- record changes. (1) ~~No~~ A license issued under this chapter is not transferable.

(2) A licensee shall notify the board within 5 days of any change in its officers or directors, name, address, employment, or other material change in the information previously furnished or required to be furnished to the board or any other material change or occurrence that could reasonably be expected to affect the licensee's right to a license. Upon ~~such~~ the change or occurrence, the board may suspend or revoke the license or may allow the business to be carried on for a temporary period under terms and conditions as the board may require.

(3) This section may not be applied to restrict the sale of a business if the buyer qualifies for a license under the provisions of this chapter."

Section 39. Section 37-60-402, MCA, is amended to read:

"37-60-402. Confidentiality of information -- false reports -- badges and uniforms -- illegal entry. (1) A licensee or officer, director, partner, or manager of a licensee may divulge to any law enforcement officer or county attorney or ~~his~~ representative of the county attorney any information ~~he~~ that the licensee or officer, director, partner, or manager of a licensee may acquire as to any criminal offense~~,~~ but ~~he~~ may not divulge to any other person, except as required by law, any information acquired ~~by him~~ except at the direction of the employer or client for whom the information was obtained.

(2) ~~No~~ A licensee or officer, director, partner, manager, or employee of a licensee may not knowingly make any false report to ~~his~~ an employer or client for whom information was being obtained.

(3) ~~No~~ A written report may not be submitted to a client except by the licensee~~, qualifying manager,~~ or a person authorized by ~~either of them~~ the licensee, and the person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in the report are true and correct.

(4) ~~No~~ A licensee or officer, director, partner, manager, or employee of a licensee may not use a title, wear a uniform, use an identification card, or make any statement with the intent to give an impression that ~~he~~ the licensee or officer, director, partner, manager, or employee of a licensee is connected in any way with the federal government, a state government, a law enforcement agency, or any political subdivision of a state government unless the licensee has a contract with the agency.

(5) ~~No~~ A licensee or officer, director, partner, manager, or employee of a licensee may not enter any private building or portion ~~thereof~~ of a private building without the consent of the owner or of the person in legal possession ~~thereof~~ of the private building."

Section 40. Section 37-60-403, MCA, is amended to read:

"37-60-403. Licensee advertising. Every advertisement by a licensee soliciting or advertising business ~~shall~~ must contain ~~his~~ the licensee's name ~~and~~, address, and license number as they appear in the records of the board."

Section 41. Section 37-60-409, MCA, is amended to read:

"37-60-409. Installation of new security alarm systems by electrician. An electrician who has received a license from the department pursuant to 37-68-301 may install new security alarm systems under the direction of a ~~journeyman~~ licensed security alarm installer~~, but such work~~. Work performed by an electrician under this section is subject to inspection and approval by a security alarm installer licensed under 37-60-303."

Section 42. Section 37-73-208, MCA, is amended to read:

"37-73-208. Elevator inspector's license -- temporary license. (1) A person intending to engage in work as an elevator inspector shall apply for a license as an elevator inspector on forms provided by the department.

(2) The department may not grant an applicant an elevator inspector's license unless the applicant demonstrates that the applicant meets the current national standards for the qualifications of elevator inspectors. The department shall designate by rule the national standards that must be met by an applicant.

(3) A newly hired elevator inspector who is not properly certified may conduct inspections for up to 6 months under a temporary license if the elevator inspector is supervised during the 6-month period of temporary licensure by appropriately certified personnel."

Section 43. Section 50-4-504, MCA, is amended to read:

"50-4-504. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.

(2) "Health care" includes both physical health care and mental health care.

(3) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ~~ambulatory~~ outpatient care to two or more unrelated persons. The term includes all facilities and institutions included in the definition of health care facility contained in 50-5-101. The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing.

(4) "Health care provider" or "provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(5) "Health insurer" means any health insurance company, health service corporation, health maintenance organization, insurer providing disability insurance as described in 33-1-207, and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and private entities."

Section 44. Section 50-4-605, MCA, is amended to read:

"50-4-605. Definitions. For the purposes of this part, the following definitions apply:

(1) "Certificate of public advantage" or "certificate" means a written certificate issued by the department as evidence of the department's intention that the implementation of a cooperative agreement, when actively supervised by the department, receive state action immunity from prosecution as a violation of state or federal antitrust laws.

(2) "Cooperative agreement" or "agreement" means a written agreement between two or more health care facilities for the sharing, allocation, or referral of patients; personnel; instructional programs; emergency medical services; support services and facilities; medical, diagnostic, or laboratory facilities or procedures; or other services customarily offered by health care facilities.

(3) "Department" means the department of justice provided for in Title 2, chapter 15, part 20.

(4) (a) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ~~ambulatory~~ outpatient care to two or more unrelated persons. The term includes all facilities and institutions included in the definition of health care facility contained in 50-5-101.

(b) The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing."

Section 45. Section 50-5-101, MCA, is amended to read:

"50-5-101. (Temporary) Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys ~~ambulatory~~ outpatient centers for surgical ~~centers~~ services upon their requests and grants accreditation status to the ~~ambulatory~~ outpatient centers for surgical ~~centers~~ services that it finds meet its standards and requirements.

(3) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

(4) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (5), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing ~~such~~ personal hygiene tasks ~~as~~, including bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.

(B) The term does not include the administration of prescriptive medications.

(6) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal

care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.

(16) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(17) "Council on accreditation" means the organization nationally recognized by that name that surveys

behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.

(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

(19) "Department" means the department of public health and human services provided for in 2-15-2201.

(20) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(21) "Federal acts" means federal statutes for the construction of health care facilities.

(22) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(23) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.

(24) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(25) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(26) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(27) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(28) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Except as otherwise provided by law, services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes:

(i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients; and

(ii) specialty hospitals.

(b) The term does not include critical access hospitals.

(29) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary--A" provides outpatient and inpatient care;

(b) an "infirmary--B" provides outpatient care only.

(30) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.

(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.

(31) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.

(32) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(33) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(34) "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.

(35) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(36) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(37) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(38) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(39) "Offer" means the representation by a health care facility that it can provide specific health services.

(40) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:

(i) serves either adjudicated or nonadjudicated youth;

(ii) charges a fee for its services; and

(iii) provides all or part of its services in the outdoors.

(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.

(41) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

(42) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

(43) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(44) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(45) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(46) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.

(47) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

(48) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(49) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(50) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted

living facility, or a retirement home.

(51) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(52) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(53) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(54) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(55) "Specialty hospital" means a specialty hospital as defined in 50-5-245.

(56) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

(57) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient. (Terminates July 1, 2007--sec. 6, Ch. 365, L. 2005.)

50-5-101. (Effective July 1, 2007) Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys ~~ambulatory~~ outpatient centers for surgical ~~centers~~ services upon their requests and grants accreditation status to the ~~ambulatory~~ outpatient centers for surgical ~~centers~~ services that it finds meet its standards and requirements.

(3) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

(4) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided

in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (5), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing ~~such~~ personal hygiene tasks ~~as~~, including bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.

(B) The term does not include the administration of prescriptive medications.

(6) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.

(16) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.

(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

(19) "Department" means the department of public health and human services provided for in 2-15-2201.

(20) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(21) "Federal acts" means federal statutes for the construction of health care facilities.

(22) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(23) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private

or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.

(24) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(25) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(26) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(27) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(28) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day,

7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients.

(b) The term does not include critical access hospitals.

(29) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary--A" provides outpatient and inpatient care;

(b) an "infirmary--B" provides outpatient care only.

(30) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.

(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.

(31) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.

(32) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(33) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(34) "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.

(35) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(36) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(37) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(38) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(39) "Offer" means the representation by a health care facility that it can provide specific health services.

(40) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:

(i) serves either adjudicated or nonadjudicated youth;

(ii) charges a fee for its services; and

(iii) provides all or part of its services in the outdoors.

(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.

(41) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

(42) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

(43) "Patient" means an individual obtaining services, including skilled nursing care, from a health care

facility.

(44) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(45) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(46) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.

(47) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

(48) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(49) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(50) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.

(51) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(52) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(53) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(54) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(55) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

(56) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute

care or extended skilled nursing care to a patient."

Section 46. Section 50-5-301, MCA, is amended to read:

"50-5-301. When certificate of need is required -- definitions. (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, the person may not initiate any of the following:

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure that exceeds $1.5 million, other than to acquire an existing health care facility. The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant with respect to which an expenditure is made must be included in determining if the expenditure exceeds $1.5 million.

(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site to another, unless:

(i) the number of beds involved is 10 or less or 10% or less of the licensed beds, if fractional, rounded down to the nearest whole number, whichever figure is smaller, and no beds have been added or relocated during the 2 years prior to the date on which the letter of intent for the proposal is received;

(ii) a letter of intent is submitted to the department; and

(iii) the department determines that the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health care facilities plan;

(c) the addition of a health service that is offered by or on behalf of a health care facility that was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and that will result in additional annual operating and amortization expenses of $150,000 or more;

(d) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:

(i) the person submits the letter of intent required by 50-5-302(2); and

(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;

(e) the construction, development, or other establishment of a health care facility that is being replaced or that did not previously exist, by any person, including another type of health care facility;

(f) the expansion of the geographical service area of a home health agency;

(g) the use of hospital beds in excess of five to provide services to patients or residents needing only

skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101;

(h) the provision by a hospital of services for home health care, long-term care, or inpatient chemical dependency treatment; or

(i) the construction, development, or other establishment of a facility for ~~ambulatory~~ outpatient surgical care through an outpatient center for surgical services in a county with a population of 20,000 or less according to the most recent federal census or estimate.

(2) For purposes of this part, the following definitions apply:

(a) "Health care facility" or "facility" means a nonfederal home health agency, a long-term care facility, or an inpatient chemical dependency facility. The term does not include:

(i) a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection (1)(h);

(ii) an office of a private physician, dentist, or other physical or mental health care professionals, including licensed addiction counselors; or

(iii) a rehabilitation facility or an outpatient center for surgical services.

(b) (i) "Long-term care facility" means an entity that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more individuals.

(ii) The term does not include residential care facilities, as defined in 50-5-101; community homes for persons with developmental disabilities, licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(3) This section may not be construed to require a health care facility to obtain a certificate of need for a nonreviewable service that would not be subject to a certificate of need if undertaken by a person other than a health care facility."

Section 47. Section 50-32-314, MCA, is amended to read:

"50-32-314. Board to adopt rules for registration of ~~ambulatory~~ outpatient center for surgical ~~facilities~~ services. (1) The board shall~~, by October 1, 1999,~~ adopt rules to provide for the registration of ~~ambulatory~~ any outpatient center for surgical ~~facilities~~ services pursuant to this part. The rules must categorize

~~ambulatory~~ the outpatient center for surgical ~~facilities~~ services as a "distributor" pursuant to 50-32-101(12) or other category of registrant as determined by the board.

(2) If the board determines that ~~ambulatory~~ an outpatient center for surgical ~~facilities require~~ services requires the services of a pharmacist in order to be registered, the board shall allow ~~those facilities~~ that center to use the services of a consulting pharmacist to satisfy the obligation imposed by the board.

(3) This section does not affect any existing registration requirement ~~that~~ pursuant to this part for persons providing dangerous drugs to an ~~ambulatory~~ outpatient center for surgical ~~facility~~ services or persons administering dangerous drugs within or as the result of procedures performed at an ~~ambulatory~~ outpatient center for surgical ~~facility be registered pursuant to this part~~ services."

Section 48. Section 71-3-1111, MCA, is amended to read:

"71-3-1111. Short title. This part may be cited as the "Physician, Nurse, Physical Therapist, Occupational Therapist, Chiropractor, Dentist, Psychologist, Licensed Social Worker, Licensed Professional Counselor, Hospital, and ~~Ambulatory~~ Outpatient Center for Surgical ~~Facility~~ Services Lien Act"."

Section 49. Section 71-3-1112, MCA, is amended to read:

"71-3-1112. Purpose. The purpose of this part is to establish lien rights for physicians, nurses, physical therapists, occupational therapists, chiropractors, dentists, hospitals, and ~~ambulatory~~ outpatient centers for surgical ~~facilities~~ services for the value of services rendered and products provided for the diagnosis and treatment of medical conditions and to establish lien rights for psychologists, licensed social workers, and licensed professional counselors for services rendered and products provided when a person receiving treatment:

(1) is injured through the fault or neglect of another; or

(2) is either insured or a beneficiary under insurance."

Section 50. Section 71-3-1113, MCA, is amended to read:

"71-3-1113. Definitions. As used in this part, the following definitions apply:

~~(1) "Ambulatory surgical facility" means a facility registered as provided in 50-32-314.~~

~~(2)~~(1) "Beneficiary" means a person entitled to insurance benefits.

~~(3)~~(2) "Dentist" means a person practicing dentistry as provided in 37-4-101.

~~(4)~~(3) "Insurance" means a contract ~~whereby~~ through which a person, the insurer, undertakes to indemnify another, the insured, or pay or provide a determinable amount or benefit upon determinable

contingencies.

~~(5)~~(4) "Insurer" includes a health service corporation.

(5) "Outpatient center for surgical services" means a facility registered as provided in 50-32-314.

(6) "Person" means an individual, a corporation, an organization, or other legal entity."

Section 51. Section 71-3-1114, MCA, is amended to read:

"71-3-1114. Liens of physicians, nurses, physical therapists, occupational therapists, chiropractors, dentists, hospitals, and ~~ambulatory~~ outpatient center for surgical ~~facilities~~ services and liens of psychologists, licensed social workers, and licensed professional counselors. (1) (a) Upon the required notice of a lien being given, there is a lien as provided in subsection (1)(b) whenever:

(i) a physician, nurse, physical therapist, occupational therapist, chiropractor, dentist, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services renders services or provides products for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor renders services or provides products; and

(iii) the services rendered or products provided under subsection (1)(a)(i) or (1)(a)(ii) are rendered or provided to a person injured through the fault or neglect of another.

(b) The physician, nurse, physical therapist, occupational therapist, chiropractor, dentist, hospital, ~~ambulatory~~ outpatient center for surgical ~~facility~~ services, psychologist, licensed social worker, or licensed professional counselor has a lien for the value of services rendered or products provided on:

(i) any claim or cause of action that the injured person or the injured person's estate or successors may have for injury, disease, or death;

(ii) any judgment that the injured person or the estate or successors may obtain for injury, disease, or death; and

(iii) all money paid in satisfaction of the judgment or in settlement of the claim or cause of action.

(2) (a) If a person is an insured or a beneficiary under insurance that provides coverage in the event of injury or disease, there is a lien as provided in subsection (2)(b) upon required notice of a lien being given by:

(i) a physician, nurse, physical therapist, occupational therapist, chiropractor, dentist, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services for the value of services rendered or products provided for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor for services rendered or

products provided.

(b) The lien is on all proceeds or payments, except payments for property damage, payable by the insurer.

(3) A physician, nurse, physical therapist, occupational therapist, chiropractor, dentist, hospital, ~~ambulatory~~ outpatient center for surgical ~~facility~~ services, psychologist, licensed social worker, or licensed professional counselor claiming a lien under this part is not liable for attorney fees and costs incurred by the injured person, the injured person's estate or successors, or a beneficiary in connection with obtaining payments or benefits subject to a lien under this part. The lien of an attorney provided for in 37-61-420 has priority over a lien created by this part."

Section 52. Section 71-3-1115, MCA, is amended to read:

"71-3-1115. Notice of lien. (1) A physician, nurse, physical therapist, occupational therapist, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services claiming a lien shall serve written notice upon the person and upon the insurer, if any, against whom liability for injury, disease, counseling service, or death is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed.

(2) A physician, nurse, physical therapist, occupational therapist, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services claiming a lien upon proceeds or payments payable by an insurer shall serve written notice upon the insurer against whom the lien is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed."

Section 53. Section 71-3-1117, MCA, is amended to read:

"71-3-1117. Liability for failure to recognize lien. If any insurer or person, after receiving notice of a lien, makes payment on account of injury, disease, counseling service, or death and the amount of the lien claimed by any physician, nurse, physical therapist, occupational therapist, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services has not been paid, the insurer or person is liable to the physician, nurse, physical therapist, occupational therapist, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services for the reasonable value of the services."

Section 54. Section 71-3-1118, MCA, is amended to read:

"71-3-1118. Applicability. (1) Except as provided in subsection (2), this part does not apply to compensation awarded to workers for injury, disease, or death pursuant to the Workers' Compensation Act.

(2) This part applies to all payments awarded for medical, therapy, chiropractic, dentistry, counseling, and hospital services pursuant to the acts referred to in subsection (1).

(3) This part does not apply to any benefits payable under:

(a) a policy of life insurance or group life insurance;

(b) a contract of disability insurance, except benefits payable in reimbursement for services rendered by a physician, nurse, physical therapist, occupational therapist, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services; or

(c) an annuity contract or to pension benefits payable under a qualified pension plan."

NEW SECTION. **Section 55. Repealer.** Sections 37-60-315 and 37-60-406, MCA, are repealed.

NEW SECTION. **Section 56. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 37, chapter 65, and the provisions of Title 37, chapter 65, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 37, chapter 69, and the provisions of Title 37, chapter 69, apply to [section 2].

(3) [Section 24] is intended to be codified as an integral part of Title 37, chapter 47, and the provisions of Title 37, chapter 47, apply to [section 24].

(4) [Section 25] is intended to be codified as an integral part of Title 37, chapter 51, part 3, and the provisions of Title 37, chapter 51, part 3, apply to [section 25].

NEW SECTION. **Section 57. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

- END -

SENATE BILL NO. 153

INTRODUCED BY V. COCCHIARELLA

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PROFESSIONAL AND OCCUPATIONAL LICENSING LAWS; CREATING EMERITUS STATUS FOR ARCHITECTS; CREATING A RETIREMENT LICENSE FOR PLUMBERS; REVISING THE BOARD OF REALTY REGULATION; REVISING THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; CLARIFYING THE DEFINITION OF "LICENSE"; PROVIDING BOARDS WITH PERMISSION TO REQUIRE STATE, REGIONAL, OR NATIONAL CERTIFICATION; EXPANDING THE UNPROFESSIONAL CONDUCT DESCRIPTION; ADDING ELEVATOR CONTRACTORS, MECHANICS, AND INSPECTORS TO THOSE COVERED BY THE UNPROFESSIONAL CONDUCT STATUTE; ADDING NATUROPATHIC PHYSICIAN, PHYSICIAN ASSISTANT, AND OPTOMETRIST TO DEFINITIONS RELATING TO NURSING; REMOVING THE OATH REQUIREMENT TO APPLY FOR A LICENSE AS A NURSE; CLARIFYING APPLICATION REQUIREMENTS FOR OPTOMETRISTS; CLARIFYING THE APPLICATION PROCESS FOR SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS; CLARIFYING TRAINEE LICENSE TERMS FOR HEARING AID DISPENSERS; REVISING TERMS FOR A VETERINARY LICENSE; REVISING RULEMAKING AUTHORITY FOR THE BOARD OF ALTERNATIVE HEALTH CARE; CLARIFYING LICENSING PROCEDURE FOR NATUROPATHIC PHYSICIANS; PROHIBITING STUDENT PRACTITIONERS OF RESPIRATORY CARE FROM RECEIVING REMUNERATION; REVISING DISTRIBUTION OF CERTAIN LICENSEE FEES FOR OUTFITTERS; CLARIFYING CONDITIONS FOR DENYING, SUSPENDING, OR REVOKING AN OUTFITTER'S, GUIDE'S, OR PROFESSIONAL GUIDE'S LICENSE; REQUIRING PUBLICATION OF A LIST OF LICENSED OUTFITTERS; PROVIDING PENALTIES FOR NONCOMPLIANCE BY REAL ESTATE BROKERS OR PROPERTY MANAGERS WITH TRUST ACCOUNT PROVISIONS; CREATING ENDORSEMENT PROVISIONS FOR A SUPERVISING REAL ESTATE BROKER; CREATING A TEMPORARY LICENSE FOR ELEVATOR INSPECTORS; REVISING THE NAME OF AMBULATORY SURGICAL FACILITIES; <u>PROVIDING ACUPUNCTURISTS WITH LIEN RIGHTS;</u> AMENDING SECTIONS 2-15-1757, 2-15-1781, 25-1-1104, 33-36-103, 37-1-130, 37-1-131, 37-1-302, 37-1-401, 37-1-410, 37-8-102, 37-8-405, 37-8-415, 37-10-302, 37-15-302, 37-16-405, 37-18-306, 37-26-201, 37-26-403, 37-28-201, 37-47-318, 37-47-341, 37-51-102, 37-51-301, 37-51-302, 37-60-101, 37-60-103, 37-60-202, 37-60-301, 37-60-302, 37-60-303, 37-60-304, 37-60-309, 37-60-310, 37-60-314, 37-60-402, 37-60-403, 37-60-409, 37-73-208, ~~50-4-504, 50-4-605, 50-5-101, 50-5-301,~~ 50-32-314, 71-3-1111, 71-3-1112, 71-3-1113, 71-3-1114,

71-3-1115, 71-3-1117, AND 71-3-1118, MCA; AND REPEALING SECTIONS 37-60-315 AND 37-60-406, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Emeritus status.** (1) A licensee who no longer practices architecture may apply to the department for emeritus status.

(2) Upon receiving an application for emeritus status accompanied by the fee established by the board, the department shall issue a license of emeritus status to the applicant and record the applicant's name in the appropriate database as an emeritus licensee, along with the date on which the licensee received emeritus status.

(3) An emeritus licensee may retain but may not use the licensee's seal and may not practice architecture.

(4) The department shall reissue an active license to an emeritus licensee who pays all application fees, meets all current requirements for licensure, and demonstrates to the board's satisfaction that for the 2 years preceding the application for active licensure, the applicant has met requirements set by the board for maintaining professional competence.

NEW SECTION. **Section 2. License of retirement status.** (1) A licensee who no longer practices plumbing may apply to the department for retirement status.

(2) Upon receiving an application for retirement status accompanied by the fee established by the board, the department shall issue a license of retirement status to the applicant and record the applicant's name in the appropriate database as a holder of a license of retirement status, along with the date on which the licensee received retirement status.

(3) A license of retirement status does not allow a holder to practice plumbing under this chapter.

(4) The department shall reissue an active license to a holder of a license of retirement status who pays the appropriate active license renewal fee.

Section 3. Section 2-15-1757, MCA, is amended to read:

"2-15-1757. Board of realty regulation. (1) There is a board of realty regulation.

(2) The board consists of ~~five~~ seven members appointed by the governor with the consent of the senate. ~~Three~~ Five members must be licensed real estate brokers ~~or~~, salespeople, or property managers who are actively

engaged in the real estate business as a broker ~~or~~, a salesperson, or a property manager in this state. Two members must be representatives of the public who are not state government officers or employees and who are not engaged in business as a real estate broker, ~~or~~ a salesperson, or a property manager. The members must be residents of this state.

(3) Not more than ~~three~~ five members, including the presiding officer, may be from the same political party.

(4) The members shall serve staggered terms of 4 years. A member may not serve more than two terms or any portion of two terms.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 2-15-1781, MCA, is amended to read:

"2-15-1781. Board of private security ~~patrol officers and investigators~~. (1) There is a board of private security ~~patrol officers and investigators~~.

(2) The board consists of seven voting members appointed by the governor with the consent of the senate. The members shall represent:

(a) one contract security company or proprietary security organization, as defined by 37-60-101;

(b) one ~~proprietary security organization~~ electronic security company, as defined by 37-60-101;

(c) one city police department;

(d) one county sheriff's office;

(e) one member of the public;

(f) one member of the peace officers' standards and training advisory council; and

(g) a licensed private investigator.

(3) Members of the board must be at least 25 years of age and have been residents of this state for more than 5 years.

(4) The appointed members of the board shall serve for a term of 3 years. The terms of board members must be staggered.

(5) The governor may remove a member for misconduct, incompetency, neglect of duty, or unprofessional or dishonorable conduct.

(6) A vacancy on the board must be filled in the same manner as the original appointment and may only be for the unexpired portion of the term.

(7) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 5. Section 25-1-1104, MCA, is amended to read:

"25-1-1104. Handbook for process servers. (1) The department of labor and industry shall publish a handbook for process servers and levying officers.

(2) Each person who applies to the clerk of the district court of any county for registration as a process server shall demonstrate that the person has passed an examination based on the handbook and administered by the board of private security ~~patrol officers and investigators~~ provided for in 2-15-1781.

(3) The department of labor and industry may charge a reasonable examination fee to cover the costs of publishing the handbook and administering the examination provided for in this section."

Section 6. Section 33-36-103, MCA, is amended to read:

"33-36-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Closed plan" means a managed care plan that requires covered persons to use only participating providers under the terms of the managed care plan.

(2) "Combination plan" means an open plan with a closed component.

(3) "Covered benefits" means those health care services to which a covered person is entitled under the terms of a health benefit plan.

(4) "Covered person" means a policyholder, subscriber, or enrollee or other individual participating in a health benefit plan.

(5) "Department" means the department of public health and human services established in 2-15-2201.

(6) "Emergency medical condition" means a condition manifesting itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in any of the following:

(a) the covered person's health would be in serious jeopardy;

(b) the covered person's bodily functions would be seriously impaired; or

(c) a bodily organ or part would be seriously damaged.

(7) "Emergency services" means health care items and services furnished or required to evaluate and treat an emergency medical condition.

(8) "Facility" means an institution providing health care services or a health care setting, including but not limited to a hospital, medical assistance facility, or critical access hospital, as defined in 50-5-101, or other licensed inpatient center, an ~~ambulatory surgical or treatment center~~ outpatient center for surgical services ~~or other outpatient~~, A treatment center, a skilled nursing center, a residential treatment center, a diagnostic~~,~~

laboratory, ~~an~~ A DIAGNOSTIC imaging center, or a rehabilitation or other therapeutic health setting.

(9) "Health benefit plan" means a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(10) "Health care professional" means a physician or other health care practitioner licensed, accredited, or certified pursuant to the laws of this state to perform specified health care services consistent with state law.

(11) "Health care provider" or "provider" means a health care professional or a facility.

(12) "Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

(13) "Health carrier" means an entity subject to the insurance laws and rules of this state that contracts, offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a disability insurer, health maintenance organization, or health service corporation or another entity providing a health benefit plan.

(14) "Intermediary" means a person authorized to negotiate, execute, and be a party to a contract between a health carrier and a provider or between a health carrier and a network.

(15) "Managed care plan" means a health benefit plan that either requires or creates incentives, including financial incentives, for a covered person to use health care providers managed, owned, under contract with, or employed by a health carrier, but not preferred provider organizations or other provider networks operated in a fee-for-service indemnity environment.

(16) "Medically necessary" means services, medicines, or supplies that are necessary and appropriate for the diagnosis or treatment of a covered person's illness, injury, or medical condition according to accepted standards of medical practice and that are not provided only as a convenience.

(17) "Network" means the group of participating providers that provides health care services to a managed care plan.

(18) "Open plan" means a managed care plan other than a closed plan that provides incentives, including financial incentives, for covered persons to use participating providers under the terms of the managed care plan.

(19) "Participating provider" means a provider who, under a contract with a health carrier or with the health carrier's contractor, subcontractor, or intermediary, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly from the health carrier.

(20) "Primary care professional" means a participating health care professional designated by the health

carrier to supervise, coordinate, or provide initial care or continuing care to a covered person and who may be required by the health carrier to initiate a referral for specialty care and to maintain supervision of health care services rendered to the covered person.

(21) "Quality assessment" means the measurement and evaluation of the quality and outcomes of medical care provided to individuals, groups, or populations.

(22) "Quality assurance" means quality assessment and quality improvement.

(23) "Quality improvement" means an effort to improve the processes and outcomes related to the provision of health care services within a health plan."

Section 7. Section 37-1-130, MCA, is amended to read:

"37-1-130. Definitions. As used in this part, the following definitions apply:

(1) "Administrative fee" means a fee established by the department to cover the cost of administrative services as provided for in 37-1-134.

(2) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(3) "Board fee" means:

(a) a fee established by the board to cover program area costs as provided in 37-1-134; and

(b) any other legislatively prescribed fees specific to boards and department programs.

(4) "Department" means the department of labor and industry established in 2-15-1701.

(5) "Department program" means a program administered by the department pursuant to this title and not affiliated with a board.

(6) "Expired license" means a license that is not reactivated within the period of ~~45~~ 46 days to 2 years after the renewal date for the license.

(7) "Lapsed license" means a license that is not renewed by the renewal date and that may be reactivated within the first 45-day period after the renewal date for the license.

(8) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

(9) "Terminated license" means a license that is not renewed or reactivated within 2 years of the license lapsing."

Section 8. Section 37-1-131, MCA, is amended to read:

"37-1-131. Duties of boards -- quorum required. (1) A quorum of each board within the department shall:

~~(1)~~(a) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;

~~(2)~~(b) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

~~(3)~~(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection ~~(2)~~ (1)(b), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

~~(4)~~(d) pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

~~(5)~~(e) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

~~(6)~~(2) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(3) A board that requires continuing education or continued state, regional, or national certification for licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of this subsection for the renewal cycle.

~~(7)~~(4) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure, as provided in 37-1-306, or require continued state, regional, or national certification for licensure. ~~If~~ Except as provided in subsection (3), if the board or department

requires continuing education or continued state, regional, or national certification for continued licensure, the board or department may not audit or ~~verify~~ require proof of continuing education or continued state, regional, or national certification requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits after the lapsed date of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement ~~after the renewal period closes~~.

~~(8)~~(5) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board."

Section 9. Section 37-1-302, MCA, is amended to read:

"37-1-302. Definitions. As used in this part, the following definitions apply:

(1) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3) "Department" means the department of labor and industry.

(4) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

(5) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the board;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether a board should seek an injunction.

(6) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

(7) "Profession" or "occupation" means a profession or occupation regulated by a board."

Section 10. Section 37-1-401, MCA, is amended to read:

"37-1-401. Uniform regulation for licensing programs without boards -- definitions. As used in this part, the following definitions apply:

(1) "Complaint" means a written allegation filed with the department that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the department;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether the department should seek an injunction.

(4) "License" means permission in the form of a license, permit, endorsement, certificate, recognition, or registration granted by the state of Montana to engage in a business activity or practice at a specific level in a profession or occupation governed by:

(a) Title 37, chapter 35, 72, 73, or 76; or

(b) Title 50, chapter 39, 74, or 76.

(5) "Profession" or "occupation" means a profession or occupation regulated by the department under the provisions of:

(a) Title 37, chapter 35, 72, 73, or 76; or

(b) Title 50, chapter 39, 74, or 76."

Section 11. Section 37-1-410, MCA, is amended to read:

"37-1-410. Unprofessional conduct. (1) The following is unprofessional conduct for a licensee or license applicant in a profession or occupation governed by this chapter:

~~(1)~~(a) being convicted, including a conviction following a plea of nolo contendere and regardless of a pending appeal, of a crime relating to or committed during the course of practicing the person's profession or occupation or involving violence, the use or sale of drugs, fraud, deceit, or theft;

~~(2)~~(b) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

~~(3)~~(c) committing fraud, misrepresentation, deception, or concealment of a material fact in applying for

or assisting in securing a license or license renewal or in taking an examination required for licensure;

~~(4)~~(d) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

~~(5)~~(e) making a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

~~(6)~~(f) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

~~(7)~~(g) ~~the~~ receiving a denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal or under judicial review or has been satisfied.

~~(8)~~(h) ~~failure~~ failing to comply with a term, condition, or limitation of a license by final order of the department;

~~(9)~~(i) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

~~(10)~~(j) misappropriating property or funds from a client or workplace or failing to comply with the department's rule regarding the accounting and distribution of a client's property or funds;

~~(11)~~(k) ~~interference~~ interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts, failure to respond to department inquiries regarding a complaint against the licensee or license applicant, or the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action or use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

~~(12)~~(l) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice the profession or occupation by use of the licensee's license.

(2) For the purposes of Title 37, chapters 72 and 73, and Title 50, chapters 74 and 76, the following additional practices are considered unprofessional conduct:

(a) addiction to or dependency on alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32;

(b) use of alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally;

(c) conduct that does not meet generally accepted standards of practice. A certified copy of a judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring within the scope of practice and the course of the practice is considered conclusive evidence of, but is not needed to prove, conduct that does not meet generally accepted standards."

Section 12. Section 37-8-102, MCA, is amended to read:

"37-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202.

(2) "Board" means the board of nursing provided for in 2-15-1734.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) "Medication aide" means a person who in an assisted living facility uses standardized procedures in the administration of drugs, as defined in 37-7-101, that are prescribed by a physician, an advanced practice registered nurse with prescriptive authority, a dentist, an osteopath, or a podiatrist authorized by state law to prescribe drugs.

(5) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a junior college, college, or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical institution or junior college.

(6) "Practice of nursing" embraces the practice of practical nursing and the practice of professional nursing.

(7) (a) "Practice of practical nursing" means the performance of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. The practice of practical nursing uses standardized procedures in the observation and care of the ill, injured, and infirm, in the maintenance of health, in action to safeguard life and health, and in the administration of medications and treatments prescribed by a physician, naturopathic physician, physician assistant, optometrist, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and

treatments. These services are performed under the supervision of a registered nurse or a physician, naturopathic physician, physician assistant, optometrist, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(b) These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

(8) "Practice of professional nursing" means the performance of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health, the prevention, casefinding, and management of illness, injury, or infirmity, and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, naturopathic physicians, physician assistants, optometrist, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (8):

(a) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(b) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals."

Section 13. Section 37-8-405, MCA, is amended to read:

"37-8-405. Professional nursing -- qualifications of applicants for license. An applicant for a license to practice as a registered professional nurse shall submit to the department written evidence~~, verified by oath,~~ that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) has completed the basic professional curriculum in an approved school of nursing and holds a diploma ~~therefrom~~ from that school; and

(3) meets other qualification requirements the board prescribes."

Section 14. Section 37-8-415, MCA, is amended to read:

"37-8-415. Licensed practical nursing -- qualifications of applicants. An applicant for a license to practice as a licensed practical nurse shall submit to the board written evidence~~, verified by oath,~~ that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) is a graduate of an approved practical nursing education program that is authorized to prepare persons for licensure as practical nurses; and

(3) meets other qualification requirements the board prescribes in its rules."

Section 15. Section 37-10-302, MCA, is amended to read:

"37-10-302. Qualifications -- application. (1) The board shall adopt rules relative to and governing the qualifications of applicants for licensure as optometrists.

(2) A person is not eligible to receive a license unless that person is ~~18 years of age or older and~~ of good moral character.

(3) A person is not eligible to receive a license unless that person has graduated from an accredited ~~high school and from a~~ school of optometry in which the practice and science of optometry is taught in a course of study that is accredited by the international association of boards of examiners in optometry.

(4) ~~A person desiring~~ An applicant for a license shall file a completed application on a form provided by the department and pay a fee prescribed by the board."

Section 16. Section 37-15-302, MCA, is amended to read:

"37-15-302. Application forms. ~~Application~~ An application for examination for licensing a speech-language pathologist or audiologist ~~shall~~ must be made upon forms prescribed by the ~~board~~ department."

Section 17. Section 37-16-405, MCA, is amended to read:

"37-16-405. Trainee license. (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take a practical examination may apply to the board for a trainee license.

(2) On receiving an application under subsection (1), accompanied by a fee fixed by the board and verification that the applicant has passed the written portion of the examination with a passing score as determined by board rule, the board shall issue a trainee license that entitles the applicant to engage in a 180-day

training period during which the applicant:

(a) is required to pass the practical examination administered by the board before being issued a hearing aid dispenser's license; and

(b) shall work under the direct supervision of the sponsoring licensed hearing aid dispenser. During this time the applicant may do the testing necessary for proper selection and fitting of hearing aids and related devices and make necessary impressions. However, the delivery and final fitting of the hearing aid and related devices must be made by the trainee and the supervisor.

(3) The training period must consist of a continuous 180-day term. Any break in training requires application for another trainee license under rules that the board may prescribe.

(4) A trainee license may not be issued unless the board has on file an unrevoked statement from a qualified licensed hearing aid dispenser accepting responsibility for the trainee. Every licensed hearing aid dispenser supervising a trainee license holder shall submit a report every 90 days of the trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible for all hearing aid fittings of the trainee. A supervisor may terminate any responsibilities to the trainee by mailing by certified mail written notice to the board and the trainee.

(5) If a person who holds a trainee license takes and fails to pass the practical examination ~~during the training period, the board may authorize the department to renew the trainee license for a period of 180 days, during which the provisions of subsection (2)(b) apply. More than one renewal is not permitted~~, the trainee license expires, and the person may not practice as a trainee.

(6) A person licensed as an audiologist under the provisions of Title 37, chapter 15, or a person practicing pursuant to 37-1-305 is exempt from the 180-day training period but is required to pass the examinations prescribed in this chapter.

(7) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee as if the conduct were the licensee's own.

(8) For the purposes of this section, "direct supervision" means the direct and regular observation and instruction of a trainee by a licensed hearing aid dispenser who is available at the same location for prompt consultation and treatment."

Section 18. Section 37-18-306, MCA, is amended to read:

"37-18-306. Display of license and certificate. A person may not practice veterinary medicine in this

state without possessing and displaying prominently in ~~his~~ the person's principal office ~~a license and~~ a current and valid ~~certificate of registration~~ license issued under this part."

Section 19. Section 37-26-201, MCA, is amended to read:

"37-26-201. Powers and duties of board. The board shall:

(1) adopt rules necessary or proper to administer and enforce this chapter;

(2) adopt rules that specify the scope of practice of naturopathic medicine stated in 37-26-301, that are consistent with the definition of naturopathic medicine provided in 37-26-103, and that are consistent with the education provided by approved naturopathic medical colleges;

(3) adopt rules that endorse equivalent licensure examinations of another state or territory of the United States, the District of Columbia, or a foreign country and that may include licensure by reciprocity;

(4) adopt rules that set nonrefundable fees for application, and licensure;

(5) approve naturopathic medical colleges as defined in 37-26-103;

(6) issue certificates of specialty practice;

(7) adopt rules that, in the discretion of the board, appropriately restrict licenses to a limited scope of practice of naturopathic medicine, which may exclude the use of minor surgery allowed under 37-26-301; and

(8) adopt rules that contain the natural substance formulary list created by the alternative health care formulary committee provided for in 37-26-301~~; and~~

~~(9) adopt rules to implement the provisions in 37-1-138~~."

Section 20. Section 37-26-403, MCA, is amended to read:

"37-26-403. Application for licensure ~~-- examination -- temporary license~~. (1) A person who desires a license to practice naturopathic medicine in Montana shall apply to the department.

(2) The application must be accompanied by the license fees, the application fees, and the documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by 37-26-402. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the necessary qualifications and whether the applicant has committed unprofessional conduct that would be a basis for licensure denial.

(3) At the board's request, the applicant shall provide necessary authorizations for the release of records and information pertinent to the department's investigation.

~~(2) A person who applies for licensure but who has not passed a licensure examination prescribed or~~

~~endorsed by the board shall apply to the board for authorization to take the prescribed licensure examination. If the board finds that all other qualifications for licensure except that of examination have been met, the board shall authorize the applicant to take the licensure examination.~~"

Section 21. Section 37-28-201, MCA, is amended to read:

"37-28-201. License required -- exceptions -- respiratory care not ~~the~~ practice of medicine. (1) Except as otherwise provided in this chapter, a person may not practice respiratory care or represent to the public that the person is a respiratory care practitioner unless licensed under the provisions of this chapter.

(2) This chapter does not prohibit:

(a) the practice of respiratory care that is an integral part of study by a student respiratory care practitioner;

(b) self-care by a patient or the gratuitous care by a friend or family member who does not purport to be a respiratory care practitioner; or

(c) respiratory care rendered in the course of an emergency.

(3) This chapter is not intended to limit, preclude, or interfere with the practice of other persons and health care providers licensed by the appropriate agencies of the state of Montana.

(4) Student practitioners providing respiratory care may not receive payment for their services.

(5) This chapter may not be construed to permit the practice of medicine."

Section 22. Section 37-47-318, MCA, is amended to read:

"37-47-318. Fees in addition to annual license fee -- allocation. (1) In addition to the fees required in 37-47-306 for an outfitter providing hunting services, the following fees apply:

(a) An outfitter shall pay an annual fee of $2 for each client served.

(b) An outfitter who is granted a net client hunter use expansion shall pay a fee of $500 for each new client added to that outfitter's operations plan.

(c) (i) An outfitter who operates hunting camps in more than one department of fish, wildlife, and parks administrative region shall pay an annual fee of $5,000 for each camp that is located beyond a 100-mile radius of the outfitter's base of operations and that is in an administrative region other than the region containing the outfitter's base of operations.

(ii) A fee is not required for the following:

~~(i)~~(A) an outfitter's base of operations camp;

~~(ii)~~(B) camps established before January 1, 1999;

~~(iii)~~(C) camps established on public land when use is directly regulated by public land use policies; or

~~(iv)~~(D) camps on corporate timberlands where public access is not restricted.

(d) An outfitter who desires a net client hunter use expansion shall pay a nonrefundable fee of $2,000 for each expansion request.

(2) Fees collected pursuant to this section must be expended by the board, pursuant to the authority in 37-47-306, and by the department of fish, wildlife, and parks, pursuant to the authority in 87-1-601, and used to fund administrative costs related to implementation of this chapter. The fees collected must be allocated as follows:

(a) Revenue generated by the $2 fee imposed in subsection (1)(a), the $500 fee imposed in subsection (1)(b), and the $2,000 fee imposed in subsection (1)(d) must be split equally between the board and the department of fish, wildlife, and parks.

~~(b) Revenue generated by the $500 fee imposed in subsection (1)(b) must be allocated between the board and the department of fish, wildlife, and parks in the following order:~~

~~(i) the amount necessary to cover the department's administrative expenses that exceed the revenue generated by subsection (2)(a); and~~

~~(ii) the remaining amount to be deposited in the state special revenue fund to the credit of the board.~~

~~(c)~~(b) Revenue generated by the $5,000 fee imposed in subsection (1)(c) must be deposited in the state special revenue fund to the credit of the board.

~~(d) Revenue generated by the $2,000 fee imposed in subsection (1)(d) must be split equally between the board and the department of fish, wildlife, and parks.~~"

Section 23. Section 37-47-341, MCA, is amended to read:

"37-47-341. Grounds for denial, suspension, or revocation of license. A license or right to apply for and hold a license issued under this part may be denied, suspended, or revoked or other disciplinary conditions may be applied upon any of the following grounds:

(1) having ceased to meet all of the qualifications for holding a license, as required under this chapter and rules adopted pursuant to this chapter;

(2) fraud or deception in procuring a license;

(3) fraudulent, untruthful, or misleading advertising;

(4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in which the

sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law. ~~A person may not apply for or hold an outfitter's, guide's, or professional guide's license during any period of time in which a sentence for a felony has been deferred or suspended.~~

(5) one conviction or bond forfeiture as to a violation of the fish and game or outfitting laws or regulations of any state or the United States;

(6) a substantial breach of a contract with a participant provided that the breach is established as a matter of final judgment in a court of law;

(7) the willful employment of or contracting with an unlicensed guide or professional guide by an outfitter;

(8) negligence or misconduct while acting as an outfitter, guide, or professional guide that causes an accident or injury to the person or property of a participant;

(9) misconduct as defined by board rule; or

(10) any violation of this chapter or a rule adopted pursuant to this chapter."

NEW SECTION. **Section 24. Publication of license information.** (1) The department shall prepare and publish an information pamphlet that contains the names and addresses of all licensed outfitters.

(2) The pamphlet described in subsection (1) must be available for free distribution as early as possible each calendar year but not later than the second Friday in March of each year.

(3) The pamphlet must contain the names, license numbers, and addresses of only those outfitters who have a currently valid license.

NEW SECTION. **Section 25. Penalty for failure to comply with trust account requirements.** (1) An employee of the department may issue a citation to a broker or property manager responsible for maintenance of a trust account for failure to comply with trust account maintenance requirements as provided by rule under 37-1-319(4).

(2) The citation must include:

(a) the time and date on which the citation is issued;

(b) the name, title, mailing address, and signature of the person issuing the citation;

(c) reference to the statute or rule violated;

(d) the name, title, and mailing address of the person to whom the citation is being sent, along with information explaining the procedure for the person receiving the citation to follow to pay the fine or dispute the violation; and

(e) the amount of the applicable fine.

(3) The applicable civil fine for failure to comply with trust account maintenance requirements is $50 for each cited violation.

(4) The person who issues the citation is authorized to collect the fine and deposit the proceeds in the state special revenue account to the credit of the board.

(5) The person who is issued a citation may pay the fine or file a written dispute of the violation with the board within 5 business days of the date of issuance.

(6) A person who refuses to sign and accept a citation but who does not file a written dispute of the violation is demonstrating unprofessional conduct.

Section 26. Section 37-51-102, MCA, is amended to read:

"37-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.

(3) "Board" means the board of realty regulation provided for in 2-15-1757.

(4) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in

connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson the name of a prospective buyer or seller of real property; or

(g) advertises or represents to the public that the individual is engaged in any of the activities referred to in subsections (4)(a) through (4)(f).

(5) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who has entered into an agreement to acquire an interest in real property. The term includes tenants or potential tenants with respect to leases or rental agreements of real property.

(6) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

(7) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

(8) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a buyer.

(9) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(10) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written authorization, as provided in 37-51-314. An in-house buyer or seller agent designate may not be considered a dual agent.

(11) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark,

trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(12) "In-house buyer agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for other than the buyer with respect to the designated transaction.

(13) "In-house seller agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a seller for a designated transaction and who may not be considered to be acting for other than the seller with respect to the designated transaction.

(14) "Listing agreement" means a written agreement between a seller and broker for the sale of real estate, with the terms and conditions set out in the agreement.

(15) "Negotiations" means:

(a) efforts to act as an intermediary between parties to a real estate transaction;

(b) facilitating and participating in contract discussions;

(c) completing forms for offers, counteroffers, addendums, and other writings; and

(d) presenting offers and counteroffers.

(16) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(17) "Property manager" includes a person who for a salary, commission, or compensation of any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602.

(18) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(19) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale, exchange, or lease of an interest in real estate and includes all communication, interposition, advisement, negotiation, and contract development and closing.

(20) "Salesperson" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(21) "Seller" means a person who has entered into a listing agreement to sell real estate and includes landlords who have an interest in or are a party to a lease or rental agreement.

(22) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

(23) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

(24) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in this chapter, a relationship other than that of a statutory broker.

(25) "Supervising broker" means a licensed broker with whom a licensed salesperson is associated, either directly, indirectly, regularly, or occasionally, to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(26) "Supervising broker endorsement" means an endorsement to a broker license that is required of any licensed broker who supervises licensed salespersons performing real estate activity."

Section 27. Section 37-51-301, MCA, is amended to read:

"37-51-301. License required -- limited to persons. (1) It is unlawful for a person to engage in or conduct, directly or indirectly, or to advertise or ~~hold himself out~~ represent to the public as engaging in or conducting the business or acting in the capacity of a real estate broker or a real estate salesperson within this state without a license as a broker or salesperson or otherwise complying with this chapter.

(2) It is unlawful for a person to supervise licensed salespersons or to act in the capacity of a supervising broker unless the person has a valid and active Montana broker license and a supervising broker endorsement.

~~(2)~~(3) Corporations, partnerships, and associations may not be licensed under this chapter. A corporation or a partnership may act as a licensee if every corporate officer and every partner performing the functions of a licensee is licensed under this chapter. All officers of a corporation or all members of a partnership acting as a licensee are in violation of this chapter unless there is full compliance with this subsection."

Section 28. Section 37-51-302, MCA, is amended to read:

"37-51-302. Broker or salesperson license -- qualifications of applicant -- supervising broker

endorsement. (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesperson in a manner ~~as to safeguard~~ that safeguards the interests of the public.

(2) An applicant for a broker's license:

(a) must be at least 18 years of age;

(b) must have graduated from an accredited high school or completed an equivalent education as determined by the board;

(c) must have been actively engaged as a licensed real estate salesperson for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesperson ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesperson because of conditions existing in the area where the applicant resides, the board may waive this experience requirement;

(d) shall file an application for a license with the department; and

(e) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours, in addition to those required to secure a salesperson's license, in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law, real estate finance, and related topics.

(3) The board shall require information it considers necessary from an applicant to determine honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesperson's license:

(i) must be at least 18 years of age;

(ii) must have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board;

(iii) shall file an application for a license with the department; and

(iv) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

(b) The application must be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the

broker will actively supervise and train the applicant during the period the requested license remains in effect.

(5) The department shall issue to each licensed broker and to each licensed salesperson a license and a pocket card in a form and size that the board prescribes.

(6) An applicant for a supervising broker endorsement shall meet the education and experience requirements established by the board by rule."

Section 29. Section 37-60-101, MCA, is amended to read:

"37-60-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Alarm response runner" means ~~any~~ an individual employed by an electronic security company, a contract security company, or a proprietary security organization to respond to security alarm system signals.

(2) "Armed" means an individual who at any time wears, carries, or possesses a firearm in the performance of professional duties.

~~(2)~~(3) "Armed carrier service" means any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

~~(3)~~(4) "Armed private investigator" means a private investigator who at any time wears, carries, or possesses~~, or has access to~~ a firearm in the performance of the individual's duties.

~~(4)~~(5) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, or carrier service guard~~, or alarm response runner~~ and who at any time wears or carries a firearm in the performance of the individual's duties.

~~(5)~~(6) "Armored car service" means any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

~~(6)~~(7) "Board" means the board of private security ~~patrol officers and investigators~~ provided for in 2-15-1781.

~~(7)~~(8) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.

~~(8)~~(9) "Contract security company" means any person who ~~installs or maintains a security alarm system,~~ undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the

performance of the details of the services rendered.

~~(9)~~(10) "Department" means the department of labor and industry provided for in 2-15-1701.

(11) (A) "Electronic security company" means a person who installs, services, or maintains a security alarm system and who undertakes to hire, employ, and provide alarm response runners and security alarm installers on a contractual basis to another person who does not exercise direction and control over the performance of the services rendered.

(B) THE TERM DOES NOT INCLUDE A PERSON WHOSE PRIMARY BUSINESS IS THAT OF A LOCKSMITH AND WHO MAY ALSO INSTALL CLOSED CIRCUIT TELEVISION CAMERAS AND BATTERY-OPERATED DOOR DEVICES.

(12) (a) "Fire investigator" means a person other than an individual identified in subsection (12)(b) who for any consideration:

(i) makes or agrees to make an investigation with reference to:

(A) a fire to identify evidence and determine cause of the fire; or

(B) accidents involving suspected negligence or arson for criminal or civil action;

(ii) testifies as an expert witness for investigations identified under this subsection (12); or

(iii) cooperates with law enforcement agencies in conducting fire investigations and collecting evidence relating to fires.

(b) The term does not mean an insurance adjuster, an individual designated as the state fire marshal under 2-15-2005, or a member of:

(i) a fire department as described in 7-3-1345;

(ii) law enforcement; or

(iii) an entity organized under Title 7, chapter 33.

(13) "Firearms course" means the course approved by the board and conducted by a firearms instructor.

(14) "Firearms instructor" means an individual who has been approved by the board to instruct firearms courses in the use of weapons.

~~(10)~~(15) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration ~~whatsoever~~ conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes ~~or wrongs committed or threatened~~ against the United States or any state or territory of the United States.

~~(11)~~(16) "Licensee" means a person licensed under this chapter.

~~(12)~~(17) "Paralegal" or "legal assistant" means a person qualified through education, training, or work

experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work.

~~(13)~~(18) "Person" ~~includes any~~ means an individual, firm, company, association, organization, partnership, ~~and~~ or corporation.

~~(14)~~(19) "Private investigator" means a person other than an insurance adjuster who for any consideration ~~whatsoever~~ makes or agrees to make any investigation with reference to:

(a) crimes ~~or wrongs done or threatened~~ against the United States or any state or territory of the United States;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, ~~whereabouts~~ location, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for ~~fires,~~ libels, losses, accidents, or injury to persons or property; or

(e) ~~securing~~ gathering evidence to be used before any court, board, officer, or investigating committee.

~~(15)~~(20) "Private security guard" means an individual employed or assigned duties to protect a person or property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property or the direction of the movements of the public in public areas.

~~(16)~~(21) "Proprietary security organization" means any person who employs a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

~~(17) "Qualifying agent" means, in the case of a corporation, a corporate employee employed in a management capacity or, in the case of a partnership, a general or unlimited partner meeting the qualifications set forth in this chapter for the operation of a contract security company, proprietary security organization, or private investigator, whichever is applicable.~~

~~(18)~~(22) "Resident manager" means the person appointed to exercise direct supervision, control, charge, management, or operation of each branch office located in this state where the business of the licensee is conducted.

(23) (A) "Security alarm installer" means an individual who installs, services, or maintains security alarm systems to detect and signal unauthorized intrusion, movement, break-in, or criminal acts and is employed by an electronic security company.

(B) THE TERM DOES NOT INCLUDE A PERSON WHOSE PRIMARY BUSINESS IS THAT OF A LOCKSMITH AND WHO MAY ALSO INSTALL CLOSED CIRCUIT TELEVISION CAMERAS AND BATTERY-OPERATED DOOR DEVICES.

~~(19)~~(24) (a) "Security alarm system" means an assembly of equipment and devices or a single device~~, such as a solid state unit that plugs directly into a 110-volt AC line, designed~~ or a portion of a system intended to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a ~~protected premises and to which signals police, private security guards, or alarm response runners are expected to respond~~ location.

(b) The term does not include ~~alarm systems and alarm~~ systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a ~~premises~~ location.

(25) "Security company" means an electronic security company, a proprietary security organization, or a contract security company.

~~(20)~~(26) "Street patrol service" means ~~any contract security company or proprietary security organization that uses foot patrols, motor vehicles, or any other means of transportation to maintain public order or detect criminal activities in public areas or thoroughfares~~ a person providing patrols by means of foot, vehicle, or other method of transportation using public street, thoroughfares, or property in the performance of the person's duties and responsibilities.

~~(21)~~(27) "Unarmed private investigator" means a private investigator who does not wear, carry, or possess~~, or have access to~~ a firearm in the performance of the individual's duties.

~~(22)~~(28) "Unarmed private security guard" means an individual who is employed by a contract security company or a proprietary security organization, whose duty or any portion of whose duty is that of a private security guard, armored car service guard, or alarm response runner, and who does not wear ~~or~~, carry, or possess a firearm in the performance of those duties."

Section 30. Section 37-60-103, MCA, is amended to read:

"37-60-103. Purpose. The purpose of this chapter is to increase the levels of integrity, competency, and performance of ~~private~~ security ~~personnel~~ companies and their employees who are required to be licensed, firearms instructors, fire investigators, and private investigators ~~in order~~ to safeguard the public health, safety,

and welfare against illegal, improper, or incompetent actions committed by ~~private~~ security ~~personnel~~ companies and their licensed employees, firearms instructors, fire investigators, or private investigators."

Section 31. Section 37-60-202, MCA, is amended to read:

"37-60-202. Rulemaking power. The board shall adopt and enforce rules:

(1) fixing the qualifications of resident managers, ~~qualifying agents,~~ licensees, and holders of identification cards, in addition to those prescribed in this chapter, necessary to promote and protect the public welfare;

(2) establishing, in accordance with 37-1-134, application fees for original ~~or renewal~~ licenses and identification cards, and providing for refunding of any fees;

(3) (a) ~~prohibiting~~ requiring approval of the board prior to the establishment of branch offices of any licensee~~, except a proprietary security organization, without approval by the board~~; and

(b) establishing qualification requirements and license fees for branch offices identified in subsection (3)(a);

(4) for the certification of private investigator ~~and~~, private security guard, security alarm installer, and alarm response runner training programs, including the certification of firearms training programs;

(5) for the licensure of firearms instructors;

(6) for the approval of weapons;

(7) requiring the maintenance of records;

(8) requiring licensees to file an insurance policy with the board; and

(9) providing for the issuance of probationary identification cards for private investigators and security alarm installers who do not meet the requirements for age, employment experience, ~~and~~ or written examination."

Section 32. Section 37-60-301, MCA, is amended to read:

"37-60-301. License required. (1) Except as provided in 37-60-105 ~~and 37-60-315~~, it is unlawful for any person to act as or perform the duties, as defined in 37-60-101, of a contract security company ~~or~~, a proprietary security organization, an electronic security company, a branch office, a private investigator, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard without having first obtained a license from the board. ~~Those persons licensed on April 18, 1983, shall retain their current licensure status and shall renew their licenses on the renewal date as prescribed by the department.~~

(2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that the person is licensed as ~~a private investigator,~~ a contract security company, a proprietary security organization, an electronic security company, a branch office, a private investigator, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard.

(3) A person appointed by the court as a confidential intermediary under 42-6-104 is not required to be licensed under this chapter. A person who is licensed under this chapter is not authorized to act as a confidential intermediary, as defined in 42-1-103, without meeting the requirements of 42-6-104.

(4) A person who knowingly engages an unlicensed ~~private investigator, private security guard, or~~ contract security company, proprietary security organization, electronic security company, branch office, private investigator, fire investigator, security alarm installer, alarm response runner, resident manager, certified firearms instructor, or private security guard is guilty of a misdemeanor punishable under 37-60-411."

Section 33. Section 37-60-302, MCA, is amended to read:

"37-60-302. ~~Qualifying agent and resident~~ Resident manager required ~~-- substitution~~. (1) Any ~~out-of-state~~ contract security company, electronic security company, or proprietary security organization that applies for a license under this chapter shall~~, before application to the board,~~ appoint for the duration of the license ~~a qualifying agent and~~ a resident manager. ~~Every qualifying agent and~~ Each resident manager shall satisfy the appropriate licensing requirements of this chapter.

(2) A separate resident manager must be appointed for each branch office located in this state, and the business of the applicant or licensee must be conducted under the resident manager's direct supervision and control.

(3) If a ~~qualifying agent or~~ resident manager for any reason ceases to perform the duties of a ~~qualifying agent or~~ resident manager on a regular basis, the licensee shall promptly notify the board of that fact ~~and of the name of a substitute individual, who shall apply to the board for continuation of the license. Pending application by and board action upon the application of the substitute, the board may suspend the license or extend it for a reasonable time~~."

Section 34. Section 37-60-303, MCA, is amended to read:

"37-60-303. License qualifications. (1) Except as provided in subsection (7)(a), an applicant for licensure under this chapter is subject to the provisions of this section and shall submit evidence under oath that the applicant:

(a) is at least 18 years of age;

(b) is a citizen of the United States or a legal, permanent resident of the United States;

(c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

(d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;

(e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;

(f) is of good moral character; and

(g) has complied with other experience qualifications as may be set by the rules of the board.

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard, security alarm installer, or alarm response runner shall:

(a) complete the ~~training~~ requirements of a ~~private security guard~~ training program certified by the board and provide, on a form prescribed by the board, written notice of satisfactory completion of the training; and

(b) fulfill other requirements as the board may by rule prescribe.

(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that the applicant:

(a) is at least 21 years of age;

(b) has at least a high school education or the equivalent;

(c) has not been dishonorably discharged from any branch of the United States military service; and

(d) has fulfilled any other requirements as the board may by rule prescribe.

(4) The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.

(5) An applicant who will wear, ~~or~~ carry, or possess a firearm in performance of the applicant's duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as the board may by rule prescribe.

(6) Except for an applicant subject to the provisions of subsection (7)(a), the board shall require a background investigation of each applicant for licensure under this chapter that includes a fingerprint check by the Montana department of justice and the federal bureau of investigation.

(7) (a) A firm, company, association, partnership, limited liability company, corporation, or other entity that intends to engage in business governed by the provisions of this chapter must be incorporated under the laws of this state or qualified to do business within this state and must be licensed by the board.

(b) Individual employees, officers, directors, agents, or other representatives of an entity described in subsection (7)(a) who engage in duties that are subject to the provisions of this part must be licensed pursuant to the requirements of this part."

Section 35. Section 37-60-304, MCA, is amended to read:

"37-60-304. Licenses -- application form and content. (1) ~~Except as provided in 37-60-303(7), an~~ An application for a license must be submitted to the department and accompanied by the application fee set by the board.

(2) An application must be made under oath and must include:

(a) the full name and address of the applicant;

(b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, an electronic security company, a branch office, a certified firearms instructor, a private investigator, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, or a private security guard;

(e) except for an applicant pursuant to 37-60-303(7)(a), one recent photograph of the applicant, of a type prescribed by the department, and one classifiable set of the applicant's fingerprints;

(f) a statement of the applicant's age and experience qualifications, except for an applicant pursuant to 37-60-303(7)(a); and

(g) other information, evidence, statements, or documents as may be prescribed by the rules of the board.

(3) The board shall verify the statements in the application ~~and the applicant's moral character~~.

(4) The submittal of fingerprints is a prerequisite to the issuance of a license, except under 37-60-303(7)(a), by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation."

Section 36. Section 37-60-309, MCA, is amended to read:

"37-60-309. Form of license and identification cards. The license~~,~~ and identification card~~, and temporary identification card for temporary security guards~~ must be in a form determined by the board."

Section 37. Section 37-60-310, MCA, is amended to read:

"37-60-310. Display of license and identification card. (1) A license must at all times be posted in a conspicuous place in the principal place of business of the licensee.

(2) A holder of an identification card ~~or a temporary identification card~~ shall carry the card while performing the cardholder's duties. A peace officer of this state or any of its political subdivisions may request to see the card at any reasonable time, and the card must be shown."

Section 38. Section 37-60-314, MCA, is amended to read:

"37-60-314. Nontransferability of license -- record changes. (1) ~~No~~ A license issued under this chapter is not transferable.

(2) A licensee shall notify the board within 5 days of any change in its officers or directors, name, address, employment, or other material change in the information previously furnished or required to be furnished to the board or any other material change or occurrence that could reasonably be expected to affect the licensee's right to a license. Upon ~~such~~ the change or occurrence, the board may suspend or revoke the license or may allow the business to be carried on for a temporary period under terms and conditions as the board may require.

(3) This section may not be applied to restrict the sale of a business if the buyer qualifies for a license under the provisions of this chapter."

Section 39. Section 37-60-402, MCA, is amended to read:

"37-60-402. Confidentiality of information -- false reports -- badges and uniforms -- illegal entry. (1) A licensee or officer, director, partner, or manager of a licensee may divulge to any law enforcement officer or county attorney or ~~his~~ representative of the county attorney any information ~~he~~ that the licensee or officer, director, partner, or manager of a licensee may acquire as to any criminal offense~~,~~ but ~~he~~ may not divulge to any other person, except as required by law, any information acquired ~~by him~~ except at the direction of the employer or client for whom the information was obtained.

(2) ~~No~~ A licensee or officer, director, partner, manager, or employee of a licensee may not knowingly make any false report to ~~his~~ an employer or client for whom information was being obtained.

(3) ~~No~~ A written report may not be submitted to a client except by the licensee~~, qualifying manager,~~ or a person authorized by ~~either of them~~ the licensee, and the person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in the report are true and correct.

(4) ~~No~~ A licensee or officer, director, partner, manager, or employee of a licensee may not use a title,

wear a uniform, use an identification card, or make any statement with the intent to give an impression that ~~he~~ the licensee or officer, director, partner, manager, or employee of a licensee is connected in any way with the federal government, a state government, a law enforcement agency, or any political subdivision of a state government unless the licensee has a contract with the agency.

(5) ~~No~~ A licensee or officer, director, partner, manager, or employee of a licensee may not enter any private building or portion ~~thereof~~ of a private building without the consent of the owner or of the person in legal possession ~~thereof~~ of the private building."

Section 40. Section 37-60-403, MCA, is amended to read:

"37-60-403. Licensee advertising. Every advertisement by a licensee soliciting or advertising business ~~shall~~ must contain ~~his~~ the licensee's name ~~and~~, address, and license number as they appear in the records of the board."

Section 41. Section 37-60-409, MCA, is amended to read:

"37-60-409. Installation of new security alarm systems by electrician. An electrician who has received a license from the department pursuant to 37-68-301 may install new security alarm systems under the direction of a ~~journeyman~~ licensed security alarm installer~~, but such work~~. Work performed by an electrician under this section is subject to inspection and approval by a security alarm installer licensed under 37-60-303."

Section 42. Section 37-73-208, MCA, is amended to read:

"37-73-208. Elevator inspector's license -- temporary license. (1) A person intending to engage in work as an elevator inspector shall apply for a license as an elevator inspector on forms provided by the department.

(2) The department may not grant an applicant an elevator inspector's license unless the applicant demonstrates that the applicant meets the current national standards for the qualifications of elevator inspectors. The department shall designate by rule the national standards that must be met by an applicant.

(3) A newly hired elevator inspector who is not properly certified may conduct inspections for up to 6 months under a temporary license if the elevator inspector is supervised during the 6-month period of temporary licensure by appropriately certified personnel."

~~**Section 43.** Section 50-4-504, MCA, is amended to read:~~

~~**"50-4-504. Definitions.** As used in this part, the following definitions apply:~~

~~(1) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.~~

~~(2) "Health care" includes both physical health care and mental health care.~~

~~(3) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory~~ outpatient ~~care to two or more unrelated persons. The term includes all facilities and institutions included in the definition of health care facility contained in 50-5-101. The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing.~~

~~(4) "Health care provider" or "provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.~~

~~(5) "Health insurer" means any health insurance company, health service corporation, health maintenance organization, insurer providing disability insurance as described in 33-1-207, and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and private entities."~~

~~**Section 44.** Section 50-4-605, MCA, is amended to read:~~

~~**"50-4-605. Definitions.** For the purposes of this part, the following definitions apply:~~

~~(1) "Certificate of public advantage" or "certificate" means a written certificate issued by the department as evidence of the department's intention that the implementation of a cooperative agreement, when actively supervised by the department, receive state action immunity from prosecution as a violation of state or federal antitrust laws.~~

~~(2) "Cooperative agreement" or "agreement" means a written agreement between two or more health care facilities for the sharing, allocation, or referral of patients; personnel; instructional programs; emergency medical services; support services and facilities; medical, diagnostic, or laboratory facilities or procedures; or other services customarily offered by health care facilities.~~

~~(3) "Department" means the department of justice provided for in Title 2, chapter 15, part 20.~~

~~(4)~~ (a) ~~"Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory~~ outpatient ~~care to two or more unrelated persons. The term includes all facilities and institutions included in the definition of health care facility contained in 50-5-101.~~

~~(b) The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing."~~

~~**Section 45.** Section 50-5-101, MCA, is amended to read:~~

~~**"50-5-101. (Temporary) Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:~~

~~(1) "Accreditation" means a designation of approval.~~

~~(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys ambulatory outpatient centers for surgical centers services upon their requests and grants accreditation status to the ambulatory outpatient centers for surgical centers services that it finds meet its standards and requirements.~~

~~(3) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.~~

~~(4) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.~~

~~(5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.~~

~~(b) As used in this subsection (5), the following definitions apply:~~

~~(i) "Aged person" means a person as defined by department rule as aged.~~

~~(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.~~

~~(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.~~

~~(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as, including bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.~~

~~(B) The term does not include the administration of prescriptive medications.~~

~~(6) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.~~

~~(7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.~~

~~(8) "Capital expenditure" means:~~

~~(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or~~

~~(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.~~

~~(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.~~

~~(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.~~

~~(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.~~

~~(12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.~~

~~(13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.~~

~~(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.~~

~~(15) "Congregate" means the provision of group services designed especially for elderly or disabled~~

~~persons who require supportive services and housing.~~

~~(16) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.~~

~~(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.~~

~~(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.~~

~~(19) "Department" means the department of public health and human services provided for in 2-15-2201.~~

~~(20) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.~~

~~(21) "Federal acts" means federal statutes for the construction of health care facilities.~~

~~(22) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.~~

~~(23) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.~~

~~(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.~~

~~(24) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.~~

~~(25) "Home infusion therapy agency" means a health care facility that provides home infusion therapy~~

~~services.~~

~~(26) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.~~

~~(27) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:~~

~~(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and~~

~~(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.~~

~~(28) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Except as otherwise provided by law, services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes:~~

~~(i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients; and~~

~~(ii) specialty hospitals.~~

~~(b) The term does not include critical access hospitals.~~

~~(29) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:~~

~~(a) an "infirmary--A" provides outpatient and inpatient care;~~

~~(b) an "infirmary--B" provides outpatient care only.~~

~~(30) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.~~

~~(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under~~

~~52-4-203.~~

~~(31) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.~~

~~(32) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.~~

~~(33) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.~~

~~(34) "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.~~

~~(35) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.~~

~~(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.~~

~~(36) "Medical assistance facility" means a facility that meets both of the following:~~

~~(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.~~

~~(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.~~

~~(37) "Mental health center" means a facility providing services for the prevention or diagnosis of mental~~

~~illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.~~

~~(38) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.~~

~~(39) "Offer" means the representation by a health care facility that it can provide specific health services.~~

~~(40) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:~~

~~(i) serves either adjudicated or nonadjudicated youth;~~

~~(ii) charges a fee for its services; and~~

~~(iii) provides all or part of its services in the outdoors.~~

~~(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.~~

~~(41) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.~~

~~(42) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.~~

~~(43) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.~~

~~(44) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.~~

~~(45) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.~~

~~(46) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.~~

~~(47) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.~~

~~(48) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological~~

~~and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.~~

~~(49) "Resident" means an individual who is in a long-term care facility or in a residential care facility.~~

~~(50) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.~~

~~(51) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.~~

~~(52) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.~~

~~(53) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.~~

~~(54) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.~~

~~(55) "Specialty hospital" means a specialty hospital as defined in 50-5-245.~~

~~(56) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.~~

~~(57) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient. (Terminates July 1, 2007--sec. 6, Ch. 365, L. 2005.)~~

~~**50-5-101. (Effective July 1, 2007) Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:~~

~~(1) "Accreditation" means a designation of approval.~~

~~(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys ambulatory~~ outpatient centers for ~~surgical centers~~ services ~~upon their requests and grants accreditation status to the ambulatory~~ outpatient centers for ~~surgical centers~~ services ~~that it finds meet its standards and requirements.~~

~~(3) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.~~

~~(4) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.~~

~~(5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.~~

~~(b) As used in this subsection (5), the following definitions apply:~~

~~(i) "Aged person" means a person as defined by department rule as aged.~~

~~(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.~~

~~(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.~~

~~(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as~~, including bathing, dressing, and hair grooming and supervision of prescriptive ~~medicine administration.~~

~~(B) The term does not include the administration of prescriptive medications.~~

~~(6) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.~~

~~(7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.~~

~~(8) "Capital expenditure" means:~~

~~(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or~~

~~(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.~~

~~(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.~~

~~(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.~~

~~(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.~~

~~(12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.~~

~~(13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.~~

~~(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.~~

~~(15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.~~

~~(16) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.~~

~~(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.~~

~~(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.~~

~~(19) "Department" means the department of public health and human services provided for in 2-15-2201.~~

~~(20) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.~~

~~(21) "Federal acts" means federal statutes for the construction of health care facilities.~~

~~(22) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.~~

~~(23) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.~~

~~(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.~~

~~(24) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.~~

~~(25) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.~~

~~(26) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.~~

~~(27) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:~~

~~(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and~~

~~(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.~~

~~(28) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients.~~

~~(b) The term does not include critical access hospitals.~~

~~(29) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:~~

~~(a) an "infirmary--A" provides outpatient and inpatient care;~~

~~(b) an "infirmary--B" provides outpatient care only.~~

~~(30) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.~~

~~(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.~~

~~(31) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.~~

~~(32) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.~~

~~(33) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.~~

~~(34) "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.~~

~~(35) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.~~

~~(b) The term does not include community homes for persons with developmental disabilities licensed~~

~~under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.~~

~~(36) "Medical assistance facility" means a facility that meets both of the following:~~

~~(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.~~

~~(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.~~

~~(37) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.~~

~~(38) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.~~

~~(39) "Offer" means the representation by a health care facility that it can provide specific health services.~~

~~(40) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:~~

~~(i) serves either adjudicated or nonadjudicated youth;~~

~~(ii) charges a fee for its services; and~~

~~(iii) provides all or part of its services in the outdoors.~~

~~(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.~~

~~(41) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.~~

~~(42) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.~~

~~(43) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.~~

~~(44) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.~~

~~(45) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.~~

~~(46) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.~~

~~(47) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.~~

~~(48) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.~~

~~(49) "Resident" means an individual who is in a long-term care facility or in a residential care facility.~~

~~(50) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.~~

~~(51) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.~~

~~(52) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.~~

~~(53) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.~~

~~(54) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.~~

~~(55) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.~~

~~(56) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient."~~

~~**Section 46.** Section 50-5-301, MCA, is amended to read:~~

~~**"50-5-301. When certificate of need is required -- definitions.** (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, the person may not initiate any of the following:~~

~~(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure that exceeds $1.5 million, other than to acquire an existing health care facility. The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant with respect to which an expenditure is made must be included in determining if the expenditure exceeds $1.5 million.~~

~~(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site to another, unless:~~

~~(i) the number of beds involved is 10 or less or 10% or less of the licensed beds, if fractional, rounded down to the nearest whole number, whichever figure is smaller, and no beds have been added or relocated during the 2 years prior to the date on which the letter of intent for the proposal is received;~~

~~(ii) a letter of intent is submitted to the department; and~~

~~(iii) the department determines that the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health care facilities plan;~~

~~(c) the addition of a health service that is offered by or on behalf of a health care facility that was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and that will result in additional annual operating and amortization expenses of $150,000 or more;~~

~~(d) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:~~

~~(i) the person submits the letter of intent required by 50-5-302(2); and~~

~~(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;~~

~~(e) the construction, development, or other establishment of a health care facility that is being replaced or that did not previously exist, by any person, including another type of health care facility;~~

~~(f) the expansion of the geographical service area of a home health agency;~~

~~(g) the use of hospital beds in excess of five to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101;~~

~~(h) the provision by a hospital of services for home health care, long-term care, or inpatient chemical dependency treatment; or~~

~~(i) the construction, development, or other establishment of a facility for ambulatory~~ outpatient ~~surgical care through an outpatient center for surgical services in a county with a population of 20,000 or less according to the most recent federal census or estimate.~~

~~(2) For purposes of this part, the following definitions apply:~~

~~(a) "Health care facility" or "facility" means a nonfederal home health agency, a long-term care facility, or an inpatient chemical dependency facility. The term does not include:~~

~~(i) a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection (1)(h);~~

~~(ii) an office of a private physician, dentist, or other physical or mental health care professionals, including licensed addiction counselors; or~~

~~(iii) a rehabilitation facility or an outpatient center for surgical services.~~

~~(b) (i) "Long-term care facility" means an entity that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more individuals.~~

~~(ii) The term does not include residential care facilities, as defined in 50-5-101; community homes for persons with developmental disabilities, licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.~~

~~(3) This section may not be construed to require a health care facility to obtain a certificate of need for a nonreviewable service that would not be subject to a certificate of need if undertaken by a person other than a health care facility."~~

Section 43. Section 50-32-314, MCA, is amended to read:

"50-32-314. Board to adopt rules for registration of ~~ambulatory~~ outpatient center for surgical ~~facilities~~ services. (1) The board shall~~, by October 1, 1999,~~ adopt rules to provide for the registration of ~~ambulatory~~ any outpatient center for surgical ~~facilities~~ services pursuant to this part. The rules must categorize ~~ambulatory~~ the outpatient center for surgical ~~facilities~~ services as a "distributor" pursuant to 50-32-101(12) or other category of registrant as determined by the board.

(2) If the board determines that ~~ambulatory~~ an outpatient center for surgical ~~facilities require~~ services requires the services of a pharmacist in order to be registered, the board shall allow ~~those facilities~~ that center to use the services of a consulting pharmacist to satisfy the obligation imposed by the board.

(3) This section does not affect any existing registration requirement ~~that~~ pursuant to this part for persons providing dangerous drugs to an ~~ambulatory~~ outpatient center for surgical ~~facility~~ services or persons administering dangerous drugs within or as the result of procedures performed at an ~~ambulatory~~ outpatient center for surgical ~~facility be registered pursuant to this part~~ services."

Section 44. Section 71-3-1111, MCA, is amended to read:

"71-3-1111. Short title. This part may be cited as the "Physician, Nurse, Physical Therapist, Occupational Therapist, ACUPUNCTURIST, Chiropractor, Dentist, Psychologist, Licensed Social Worker, Licensed Professional Counselor, Hospital, and ~~Ambulatory~~ Outpatient Center for Surgical ~~Facility~~ Services Lien Act"."

Section 45. Section 71-3-1112, MCA, is amended to read:

"71-3-1112. Purpose. The purpose of this part is to establish lien rights for physicians, nurses, physical therapists, occupational therapists, ACUPUNCTURISTS, chiropractors, dentists, hospitals, and ~~ambulatory~~ outpatient centers for surgical ~~facilities~~ services for the value of services rendered and products provided for the diagnosis and treatment of medical conditions and to establish lien rights for psychologists, licensed social workers, and licensed professional counselors for services rendered and products provided when a person receiving treatment:

(1) is injured through the fault or neglect of another; or

(2) is either insured or a beneficiary under insurance."

Section 46. Section 71-3-1113, MCA, is amended to read:

"71-3-1113. Definitions. As used in this part, the following definitions apply:

~~(1) "Ambulatory surgical facility" means a facility registered as provided in 50-32-314.~~

~~(2)~~(1) "Beneficiary" means a person entitled to insurance benefits.

~~(3)~~(2) "Dentist" means a person practicing dentistry as provided in 37-4-101.

~~(4)~~(3) "Insurance" means a contract ~~whereby~~ through which a person, the insurer, undertakes to indemnify another, the insured, or pay or provide a determinable amount or benefit upon determinable contingencies.

~~(5)~~(4) "Insurer" includes a health service corporation.

(5) "Outpatient center for surgical services" means a facility registered as provided in 50-32-314.

(6) "Person" means an individual, a corporation, an organization, or other legal entity."

Section 47. Section 71-3-1114, MCA, is amended to read:

"71-3-1114. Liens of physicians, nurses, physical therapists, occupational therapists, ACUPUNCTURISTS, chiropractors, dentists, hospitals, and ~~ambulatory~~ outpatient center for surgical ~~facilities~~ services and liens of psychologists, licensed social workers, and licensed professional counselors. (1) (a) Upon the required notice of a lien being given, there is a lien as provided in subsection (1)(b) whenever:

(i) a physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services renders services or provides products for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor renders services or provides products; and

(iii) the services rendered or products provided under subsection (1)(a)(i) or (1)(a)(ii) are rendered or provided to a person injured through the fault or neglect of another.

(b) The physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, hospital, ~~ambulatory~~ outpatient center for surgical ~~facility~~ services, psychologist, licensed social worker, or licensed professional counselor has a lien for the value of services rendered or products provided on:

(i) any claim or cause of action that the injured person or the injured person's estate or successors may have for injury, disease, or death;

(ii) any judgment that the injured person or the estate or successors may obtain for injury, disease, or death; and

(iii) all money paid in satisfaction of the judgment or in settlement of the claim or cause of action.

(2) (a) If a person is an insured or a beneficiary under insurance that provides coverage in the event of injury or disease, there is a lien as provided in subsection (2)(b) upon required notice of a lien being given by:

(i) a physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services for the value of services rendered or products provided for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor for services rendered or products provided.

(b) The lien is on all proceeds or payments, except payments for property damage, payable by the insurer.

(3) A physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, hospital, ~~ambulatory~~ outpatient center for surgical ~~facility~~ services, psychologist, licensed social worker, or licensed professional counselor claiming a lien under this part is not liable for attorney fees and costs incurred by the injured person, the injured person's estate or successors, or a beneficiary in connection with obtaining payments or benefits subject to a lien under this part. The lien of an attorney provided for in 37-61-420 has priority over a lien created by this part."

Section 48. Section 71-3-1115, MCA, is amended to read:

"71-3-1115. Notice of lien. (1) A physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services claiming a lien shall serve written notice upon the person and upon the insurer, if any, against whom liability for injury, disease, counseling service, or death is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed.

(2) A physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services claiming a lien upon proceeds or payments payable by an insurer shall serve written notice upon the insurer against whom the lien is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed."

Section 49. Section 71-3-1117, MCA, is amended to read:

"71-3-1117. Liability for failure to recognize lien. If any insurer or person, after receiving notice of a lien, makes payment on account of injury, disease, counseling service, or death and the amount of the lien claimed by any physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist,

psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services has not been paid, the insurer or person is liable to the physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services for the reasonable value of the services."

Section 50. Section 71-3-1118, MCA, is amended to read:

"71-3-1118. Applicability. (1) Except as provided in subsection (2), this part does not apply to compensation awarded to workers for injury, disease, or death pursuant to the Workers' Compensation Act.

(2) This part applies to all payments awarded for medical, therapy, ACUPUNCTURE, chiropractic, dentistry, counseling, and hospital services pursuant to the acts referred to in subsection (1).

(3) This part does not apply to any benefits payable under:

(a) a policy of life insurance or group life insurance;

(b) a contract of disability insurance, except benefits payable in reimbursement for services rendered by a physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services; or

(c) an annuity contract or to pension benefits payable under a qualified pension plan."

NEW SECTION. **Section 51. Repealer.** Sections 37-60-315 and 37-60-406, MCA, are repealed.

NEW SECTION. **Section 52. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 37, chapter 65, and the provisions of Title 37, chapter 65, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 37, chapter 69, and the provisions of Title 37, chapter 69, apply to [section 2].

(3) [Section 24] is intended to be codified as an integral part of Title 37, chapter 47, and the provisions of Title 37, chapter 47, apply to [section 24].

(4) [Section 25] is intended to be codified as an integral part of Title 37, chapter 51, part 3, and the provisions of Title 37, chapter 51, part 3, apply to [section 25].

NEW SECTION. **Section 53. Saving clause.** [This act] does not affect rights and duties that matured,

penalties that were incurred, or proceedings that were begun before [the effective date of this act].

- END -

SENATE BILL NO. 153

INTRODUCED BY V. COCCHIARELLA

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PROFESSIONAL AND OCCUPATIONAL LICENSING LAWS; CREATING EMERITUS STATUS FOR ARCHITECTS; CREATING A RETIREMENT LICENSE FOR PLUMBERS; REVISING THE BOARD OF REALTY REGULATION; REVISING THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; CLARIFYING THE DEFINITION OF "LICENSE"; PROVIDING BOARDS WITH PERMISSION TO REQUIRE STATE, REGIONAL, OR NATIONAL CERTIFICATION; EXPANDING THE UNPROFESSIONAL CONDUCT DESCRIPTION; ADDING ELEVATOR CONTRACTORS, MECHANICS, AND INSPECTORS TO THOSE COVERED BY THE UNPROFESSIONAL CONDUCT STATUTE; ADDING NATUROPATHIC PHYSICIAN, PHYSICIAN ASSISTANT, AND OPTOMETRIST TO DEFINITIONS RELATING TO NURSING; REMOVING THE OATH REQUIREMENT TO APPLY FOR A LICENSE AS A NURSE; CLARIFYING APPLICATION REQUIREMENTS FOR OPTOMETRISTS; CLARIFYING THE APPLICATION PROCESS FOR SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS; CLARIFYING TRAINEE LICENSE TERMS FOR HEARING AID DISPENSERS; REVISING TERMS FOR A VETERINARY LICENSE; REVISING RULEMAKING AUTHORITY FOR THE BOARD OF ALTERNATIVE HEALTH CARE; CLARIFYING LICENSING PROCEDURE FOR NATUROPATHIC PHYSICIANS; ~~PROHIBITING STUDENT PRACTITIONERS OF RESPIRATORY CARE FROM RECEIVING REMUNERATION;~~ REVISING DISTRIBUTION OF CERTAIN LICENSEE FEES FOR OUTFITTERS; CLARIFYING CONDITIONS FOR DENYING, SUSPENDING, OR REVOKING AN OUTFITTER'S, GUIDE'S, OR PROFESSIONAL GUIDE'S LICENSE; REQUIRING PUBLICATION OF A LIST OF LICENSED OUTFITTERS; PROVIDING PENALTIES FOR NONCOMPLIANCE BY REAL ESTATE BROKERS OR PROPERTY MANAGERS WITH TRUST ACCOUNT PROVISIONS; CREATING ENDORSEMENT PROVISIONS FOR A SUPERVISING REAL ESTATE BROKER; CREATING A TEMPORARY LICENSE FOR ELEVATOR INSPECTORS; REVISING THE NAME OF AMBULATORY SURGICAL FACILITIES; PROVIDING ACUPUNCTURISTS WITH LIEN RIGHTS; AMENDING SECTIONS 2-15-1757, 2-15-1781, 25-1-1104, 33-36-103, 37-1-130, 37-1-131, 37-1-302, 37-1-401, 37-1-410, 37-8-102, 37-8-405, 37-8-415, 37-10-302, 37-15-302, 37-16-405, 37-18-306, 37-26-201, 37-26-403, ~~37-28-201,~~ 37-47-318, 37-47-341, 37-51-102, 37-51-301, 37-51-302, 37-60-101, 37-60-103, 37-60-202, 37-60-301, 37-60-302, 37-60-303, 37-60-304, 37-60-309, 37-60-310, 37-60-314, 37-60-402, 37-60-403, 37-60-409, 37-73-208, ~~50-4-504, 50-4-605, 50-5-101, 50-5-301,~~ 50-32-314, 71-3-1111, 71-3-1112, 71-3-1113, 71-3-1114,

71-3-1115, 71-3-1117, AND 71-3-1118, MCA; AND REPEALING SECTIONS 37-60-315 AND 37-60-406, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Emeritus status.** (1) A licensee who no longer practices architecture may apply to the department for emeritus status.

(2) Upon receiving an application for emeritus status accompanied by the fee established by the board, the department shall issue a license of emeritus status to the applicant and record the applicant's name in the appropriate database as an emeritus licensee, along with the date on which the licensee received emeritus status.

(3) An emeritus licensee may retain but may not use the licensee's seal and may not practice architecture.

(4) The department shall reissue an active license to an emeritus licensee who pays all application fees, meets all current requirements for licensure, and demonstrates to the board's satisfaction that for the 2 years preceding the application for active licensure, the applicant has met requirements set by the board for maintaining professional competence.

NEW SECTION. **Section 2. License of retirement status.** (1) A licensee who no longer practices plumbing may apply to the department for retirement status.

(2) Upon receiving an application for retirement status accompanied by the fee established by the board, the department shall issue a license of retirement status to the applicant and record the applicant's name in the appropriate database as a holder of a license of retirement status, along with the date on which the licensee received retirement status.

(3) A license of retirement status does not allow a holder to practice plumbing under this chapter.

(4) The department shall reissue an active license to a holder of a license of retirement status who pays the appropriate active license renewal fee AND MEETS ANY COMPETENCY REQUIREMENTS ESTABLISHED BY RULE BY THE DEPARTMENT.

Section 3. Section 2-15-1757, MCA, is amended to read:

"2-15-1757. Board of realty regulation. (1) There is a board of realty regulation.

(2) The board consists of ~~five~~ seven members appointed by the governor with the consent of the senate.

~~Three~~ Five members must be licensed real estate brokers ~~or~~, salespeople, or property managers who are actively engaged in the real estate business as a broker ~~or~~, a salesperson, or a property manager in this state. Two members must be representatives of the public who are not state government officers or employees and who are not engaged in business as a real estate broker, ~~or~~ a salesperson, or a property manager. The members must be residents of this state.

(3) Not more than ~~three~~ five members, including the presiding officer, may be from the same political party.

(4) The members shall serve staggered terms of 4 years. A member may not serve more than two terms or any portion of two terms.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 2-15-1781, MCA, is amended to read:

"2-15-1781. Board of private security ~~patrol officers and investigators~~. (1) There is a board of private security ~~patrol officers and investigators~~.

(2) The board consists of seven voting members appointed by the governor with the consent of the senate. The members shall represent:

(a) one contract security company or proprietary security organization, as defined by 37-60-101;

(b) one ~~proprietary security organization~~ electronic security company, as defined by 37-60-101;

(c) one city police department;

(d) one county sheriff's office;

(e) one member of the public;

(f) one member of the peace officers' standards and training advisory council; and

(g) a licensed private investigator.

(3) Members of the board must be at least 25 years of age and have been residents of this state for more than 5 years.

(4) The appointed members of the board shall serve for a term of 3 years. The terms of board members must be staggered.

(5) The governor may remove a member for misconduct, incompetency, neglect of duty, or unprofessional or dishonorable conduct.

(6) A vacancy on the board must be filled in the same manner as the original appointment and may only be for the unexpired portion of the term.

(7) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 5. Section 25-1-1104, MCA, is amended to read:

"25-1-1104. Handbook for process servers. (1) The department of labor and industry shall publish a handbook for process servers and levying officers.

(2) Each person who applies to the clerk of the district court of any county for registration as a process server shall demonstrate that the person has passed an examination based on the handbook and administered by the board of private security ~~patrol officers and investigators~~ provided for in 2-15-1781.

(3) The department of labor and industry may charge a reasonable examination fee to cover the costs of publishing the handbook and administering the examination provided for in this section."

Section 6. Section 33-36-103, MCA, is amended to read:

"33-36-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Closed plan" means a managed care plan that requires covered persons to use only participating providers under the terms of the managed care plan.

(2) "Combination plan" means an open plan with a closed component.

(3) "Covered benefits" means those health care services to which a covered person is entitled under the terms of a health benefit plan.

(4) "Covered person" means a policyholder, subscriber, or enrollee or other individual participating in a health benefit plan.

(5) "Department" means the department of public health and human services established in 2-15-2201.

(6) "Emergency medical condition" means a condition manifesting itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in any of the following:

(a) the covered person's health would be in serious jeopardy;

(b) the covered person's bodily functions would be seriously impaired; or

(c) a bodily organ or part would be seriously damaged.

(7) "Emergency services" means health care items and services furnished or required to evaluate and treat an emergency medical condition.

(8) "Facility" means an institution providing health care services or a health care setting, including but not limited to a hospital, medical assistance facility, or critical access hospital, as defined in 50-5-101, or other

licensed inpatient center, an ~~ambulatory surgical or treatment center~~ outpatient center for surgical services ~~or other outpatient~~, A treatment center, a skilled nursing center, a residential treatment center, a diagnostic~~,~~ laboratory, ~~an~~ A DIAGNOSTIC imaging center, or a rehabilitation or other therapeutic health setting.

(9) "Health benefit plan" means a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(10) "Health care professional" means a physician or other health care practitioner licensed, accredited, or certified pursuant to the laws of this state to perform specified health care services consistent with state law.

(11) "Health care provider" or "provider" means a health care professional or a facility.

(12) "Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

(13) "Health carrier" means an entity subject to the insurance laws and rules of this state that contracts, offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a disability insurer, health maintenance organization, or health service corporation or another entity providing a health benefit plan.

(14) "Intermediary" means a person authorized to negotiate, execute, and be a party to a contract between a health carrier and a provider or between a health carrier and a network.

(15) "Managed care plan" means a health benefit plan that either requires or creates incentives, including financial incentives, for a covered person to use health care providers managed, owned, under contract with, or employed by a health carrier, but not preferred provider organizations or other provider networks operated in a fee-for-service indemnity environment.

(16) "Medically necessary" means services, medicines, or supplies that are necessary and appropriate for the diagnosis or treatment of a covered person's illness, injury, or medical condition according to accepted standards of medical practice and that are not provided only as a convenience.

(17) "Network" means the group of participating providers that provides health care services to a managed care plan.

(18) "Open plan" means a managed care plan other than a closed plan that provides incentives, including financial incentives, for covered persons to use participating providers under the terms of the managed care plan.

(19) "Participating provider" means a provider who, under a contract with a health carrier or with the health carrier's contractor, subcontractor, or intermediary, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly

or indirectly from the health carrier.

(20) "Primary care professional" means a participating health care professional designated by the health carrier to supervise, coordinate, or provide initial care or continuing care to a covered person and who may be required by the health carrier to initiate a referral for specialty care and to maintain supervision of health care services rendered to the covered person.

(21) "Quality assessment" means the measurement and evaluation of the quality and outcomes of medical care provided to individuals, groups, or populations.

(22) "Quality assurance" means quality assessment and quality improvement.

(23) "Quality improvement" means an effort to improve the processes and outcomes related to the provision of health care services within a health plan."

Section 7. Section 37-1-130, MCA, is amended to read:

"37-1-130. Definitions. As used in this part, the following definitions apply:

(1) "Administrative fee" means a fee established by the department to cover the cost of administrative services as provided for in 37-1-134.

(2) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(3) "Board fee" means:

(a) a fee established by the board to cover program area costs as provided in 37-1-134; and

(b) any other legislatively prescribed fees specific to boards and department programs.

(4) "Department" means the department of labor and industry established in 2-15-1701.

(5) "Department program" means a program administered by the department pursuant to this title and not affiliated with a board.

(6) "Expired license" means a license that is not reactivated within the period of ~~45~~ 46 days to 2 years after the renewal date for the license.

(7) "Lapsed license" means a license that is not renewed by the renewal date and that may be reactivated within the first 45-day period after the renewal date for the license.

(8) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

(9) "Terminated license" means a license that is not renewed or reactivated within 2 years of the license

lapsing."

Section 8. Section 37-1-131, MCA, is amended to read:

"37-1-131. Duties of boards -- quorum required. (1) A quorum of each board within the department shall:

~~(1)~~(a) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;

~~(2)~~(b) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

~~(3)~~(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection ~~(2)~~ (1)(b), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

~~(4)~~(d) pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

~~(5)~~(e) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

~~(6)~~(2) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(3) A board that requires continuing education or continued state, regional, or national certification for licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of this subsection for the renewal cycle.

~~(7)~~(4) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure, as provided in 37-1-306, or require continued state, regional, or national certification for licensure. ~~If~~ Except as provided in subsection (3), if the board or department requires continuing education or continued state, regional, or national certification for continued licensure, the board or department may not audit or ~~verify~~ require proof of continuing education or continued state, regional, or national certification requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits after the lapsed date of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement ~~after the renewal period closes~~.

~~(8)~~(5) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board."

Section 9. Section 37-1-302, MCA, is amended to read:

"37-1-302. Definitions. As used in this part, the following definitions apply:

(1) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3) "Department" means the department of labor and industry.

(4) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

(5) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the board;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether a board should seek an injunction.

(6) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

(7) "Profession" or "occupation" means a profession or occupation regulated by a board."

Section 10. Section 37-1-401, MCA, is amended to read:

"37-1-401. Uniform regulation for licensing programs without boards -- definitions. As used in this part, the following definitions apply:

(1) "Complaint" means a written allegation filed with the department that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the department;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether the department should seek an injunction.

(4) "License" means permission in the form of a license, permit, endorsement, certificate, recognition, or registration granted by the state of Montana to engage in a business activity or practice at a specific level in a profession or occupation governed by:

(a) Title 37, chapter 35, 72, 73, or 76; or

(b) Title 50, chapter 39, 74, or 76.

(5) "Profession" or "occupation" means a profession or occupation regulated by the department under the provisions of:

(a) Title 37, chapter 35, 72, 73, or 76; or

(b) Title 50, chapter 39, 74, or 76."

Section 11. Section 37-1-410, MCA, is amended to read:

"37-1-410. Unprofessional conduct. (1) The following is unprofessional conduct for a licensee or license applicant in a profession or occupation governed by this chapter:

~~(1)~~(a) being convicted, including a conviction following a plea of nolo contendere and regardless of a pending appeal, of a crime relating to or committed during the course of practicing the person's profession or occupation or involving violence, the use or sale of drugs, fraud, deceit, or theft;

~~(2)~~(b) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

~~(3)~~(c) committing fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

~~(4)~~(d) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

~~(5)~~(e) making a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

~~(6)~~(f) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

~~(7)~~(g) ~~the~~ receiving a denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal or under judicial review or has been satisfied.

~~(8)~~(h) ~~failure~~ failing to comply with a term, condition, or limitation of a license by final order of the department;

~~(9)~~(i) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

~~(10)~~(j) misappropriating property or funds from a client or workplace or failing to comply with the department's rule regarding the accounting and distribution of a client's property or funds;

~~(11)~~(k) ~~interference~~ interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts, failure to respond to department inquiries regarding a complaint against the licensee or license applicant, or the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action or use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

~~(12)~~(l) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice the profession or occupation by use of the licensee's license.

(2) For the purposes of Title 37, chapters 72 and 73, and Title 50, chapters 74 and 76, the following additional practices are considered unprofessional conduct:

(a) addiction to or dependency on alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32;

(b) use of alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32, to the extent

that the use impairs the user physically or mentally;

(c) conduct that does not meet generally accepted standards of practice. A certified copy of a judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring within the scope of practice and the course of the practice is considered conclusive evidence of, but is not needed to prove, conduct that does not meet generally accepted standards."

Section 12. Section 37-8-102, MCA, is amended to read:

"37-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202.

(2) "Board" means the board of nursing provided for in 2-15-1734.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) "Medication aide" means a person who in an assisted living facility uses standardized procedures in the administration of drugs, as defined in 37-7-101, that are prescribed by a physician, an advanced practice registered nurse with prescriptive authority, a dentist, an osteopath, or a podiatrist authorized by state law to prescribe drugs.

(5) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a junior college, college, or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical institution or junior college.

(6) "Practice of nursing" embraces the practice of practical nursing and the practice of professional nursing.

(7) (a) "Practice of practical nursing" means the performance of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. The practice of practical nursing uses standardized procedures in the observation and care of the ill, injured, and infirm, in the maintenance of health, in action to safeguard life and health, and in the administration of medications and treatments prescribed by a physician, naturopathic physician, physician assistant, optometrist, advanced

practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, naturopathic physician, physician assistant, optometrist, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(b) These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

(8) "Practice of professional nursing" means the performance of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health, the prevention, casefinding, and management of illness, injury, or infirmity, and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, naturopathic physicians, physician assistants, optometrist, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (8):

(a) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(b) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals."

Section 13. Section 37-8-405, MCA, is amended to read:

"37-8-405. Professional nursing -- qualifications of applicants for license. An applicant for a license to practice as a registered professional nurse shall submit to the department written evidence~~, verified by oath,~~ that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) has completed the basic professional curriculum in an approved school of nursing and holds a diploma ~~therefrom~~ from that school; and

(3) meets other qualification requirements the board prescribes."

Section 14. Section 37-8-415, MCA, is amended to read:

"37-8-415. Licensed practical nursing -- qualifications of applicants. An applicant for a license to practice as a licensed practical nurse shall submit to the board written evidence~~, verified by oath,~~ that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) is a graduate of an approved practical nursing education program that is authorized to prepare persons for licensure as practical nurses; and

(3) meets other qualification requirements the board prescribes in its rules."

Section 15. Section 37-10-302, MCA, is amended to read:

"37-10-302. Qualifications -- application. (1) The board shall adopt rules relative to and governing the qualifications of applicants for licensure as optometrists.

(2) A person is not eligible to receive a license unless that person is ~~18 years of age or older and~~ of good moral character.

(3) A person is not eligible to receive a license unless that person has graduated from an accredited ~~high school and from a~~ school of optometry in which the practice and science of optometry is taught in a course of study that is accredited by the international association of boards of examiners in optometry.

(4) ~~A person desiring~~ An applicant for a license shall file a completed application on a form provided by the department and pay a fee prescribed by the board."

Section 16. Section 37-15-302, MCA, is amended to read:

"37-15-302. Application forms. ~~Application~~ An application for examination for licensing a speech-language pathologist or audiologist ~~shall~~ must be made upon forms prescribed by the ~~board~~ department."

Section 17. Section 37-16-405, MCA, is amended to read:

"37-16-405. Trainee license. (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take a practical examination may apply to the board for a trainee license.

(2) On receiving an application under subsection (1), accompanied by a fee fixed by the board and verification that the applicant has passed the written portion of the examination with a passing score as determined by board rule, the board shall issue a trainee license that entitles the applicant to engage in a 180-day

training period during which the applicant:

(a) is required to pass the practical examination administered by the board before being issued a hearing aid dispenser's license; and

(b) shall work under the direct supervision of the sponsoring licensed hearing aid dispenser. During this time the applicant may do the testing necessary for proper selection and fitting of hearing aids and related devices and make necessary impressions. However, the delivery and final fitting of the hearing aid and related devices must be made by the trainee and the supervisor.

(3) The training period must consist of a continuous 180-day term. Any break in training requires application for another trainee license under rules that the board may prescribe.

(4) A trainee license may not be issued unless the board has on file an unrevoked statement from a qualified licensed hearing aid dispenser accepting responsibility for the trainee. Every licensed hearing aid dispenser supervising a trainee license holder shall submit a report every 90 days of the trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible for all hearing aid fittings of the trainee. A supervisor may terminate any responsibilities to the trainee by mailing by certified mail written notice to the board and the trainee.

(5) If a person who holds a trainee license takes and fails to pass the practical examination ~~during the training period, the board may authorize the department to renew the trainee license for a period of 180 days, during which the provisions of subsection (2)(b) apply. More than one renewal is not permitted~~, the trainee license expires, and the person may not practice as a trainee.

(6) A person licensed as an audiologist under the provisions of Title 37, chapter 15, or a person practicing pursuant to 37-1-305 is exempt from the 180-day training period but is required to pass the examinations prescribed in this chapter.

(7) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee as if the conduct were the licensee's own.

(8) For the purposes of this section, "direct supervision" means the direct and regular observation and instruction of a trainee by a licensed hearing aid dispenser who is available at the same location for prompt consultation and treatment."

Section 18. Section 37-18-306, MCA, is amended to read:

"37-18-306. Display of license and certificate. A person may not practice veterinary medicine in this

state without possessing and displaying prominently in ~~his~~ the person's principal office ~~a license and~~ a current and valid ~~certificate of registration~~ license issued under this part."

Section 19. Section 37-26-201, MCA, is amended to read:

"37-26-201. Powers and duties of board. The board shall:

(1) adopt rules necessary or proper to administer and enforce this chapter;

(2) adopt rules that specify the scope of practice of naturopathic medicine stated in 37-26-301, that are consistent with the definition of naturopathic medicine provided in 37-26-103, and that are consistent with the education provided by approved naturopathic medical colleges;

(3) adopt rules that endorse equivalent licensure examinations of another state or territory of the United States, the District of Columbia, or a foreign country and that may include licensure by reciprocity;

(4) adopt rules that set nonrefundable fees for application, and licensure;

(5) approve naturopathic medical colleges as defined in 37-26-103;

(6) issue certificates of specialty practice;

(7) adopt rules that, in the discretion of the board, appropriately restrict licenses to a limited scope of practice of naturopathic medicine, which may exclude the use of minor surgery allowed under 37-26-301; and

(8) adopt rules that contain the natural substance formulary list created by the alternative health care formulary committee provided for in 37-26-301~~; and~~

~~(9) adopt rules to implement the provisions in 37-1-138~~."

Section 20. Section 37-26-403, MCA, is amended to read:

"37-26-403. Application for licensure ~~-- examination -- temporary license~~. (1) A person who desires a license to practice naturopathic medicine in Montana shall apply to the department.

(2) The application must be accompanied by the license fees, the application fees, and the documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by 37-26-402. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the necessary qualifications and whether the applicant has committed unprofessional conduct that would be a basis for licensure denial.

(3) At the board's request, the applicant shall provide necessary authorizations for the release of records and information pertinent to the department's investigation.

~~(2) A person who applies for licensure but who has not passed a licensure examination prescribed or~~

~~endorsed by the board shall apply to the board for authorization to take the prescribed licensure examination. If the board finds that all other qualifications for licensure except that of examination have been met, the board shall authorize the applicant to take the licensure examination.~~"

~~**Section 21.** Section 37-28-201, MCA, is amended to read:~~

~~**"37-28-201. License required -- exceptions -- respiratory care not the practice of medicine.** (1) Except as otherwise provided in this chapter, a person may not practice respiratory care or represent to the public that the person is a respiratory care practitioner unless licensed under the provisions of this chapter.~~

~~(2) This chapter does not prohibit:~~

~~(a) the practice of respiratory care that is an integral part of study by a student respiratory care practitioner;~~

~~(b) self-care by a patient or the gratuitous care by a friend or family member who does not purport to be a respiratory care practitioner; or~~

~~(c) respiratory care rendered in the course of an emergency.~~

~~(3) This chapter is not intended to limit, preclude, or interfere with the practice of other persons and health care providers licensed by the appropriate agencies of the state of Montana.~~

~~(4) Student practitioners providing respiratory care may not receive payment for their services.~~

~~(5) This chapter may not be construed to permit the practice of medicine."~~

Section 21. Section 37-47-318, MCA, is amended to read:

"37-47-318. Fees in addition to annual license fee -- allocation. (1) In addition to the fees required in 37-47-306 for an outfitter providing hunting services, the following fees apply:

(a) An outfitter shall pay an annual fee of $2 for each client served.

(b) An outfitter who is granted a net client hunter use expansion shall pay a fee of $500 for each new client added to that outfitter's operations plan.

(c) (i) An outfitter who operates hunting camps in more than one department of fish, wildlife, and parks administrative region shall pay an annual fee of $5,000 for each camp that is located beyond a 100-mile radius of the outfitter's base of operations and that is in an administrative region other than the region containing the outfitter's base of operations.

(ii) A fee is not required for the following:

~~(i)~~(A) an outfitter's base of operations camp;

~~(ii)~~(B) camps established before January 1, 1999;

~~(iii)~~(C) camps established on public land when use is directly regulated by public land use policies; or

~~(iv)~~(D) camps on corporate timberlands where public access is not restricted.

(d) An outfitter who desires a net client hunter use expansion shall pay a nonrefundable fee of $2,000 for each expansion request.

(2) Fees collected pursuant to this section must be expended by the board, pursuant to the authority in 37-47-306, and by the department of fish, wildlife, and parks, pursuant to the authority in 87-1-601, and used to fund administrative costs related to implementation of this chapter. The fees collected must be allocated as follows:

(a) Revenue generated by the $2 fee imposed in subsection (1)(a), the $500 fee imposed in subsection (1)(b), and the $2,000 fee imposed in subsection (1)(d) must be split equally between the board and the department of fish, wildlife, and parks.

~~(b) Revenue generated by the $500 fee imposed in subsection (1)(b) must be allocated between the board and the department of fish, wildlife, and parks in the following order:~~

~~(i) the amount necessary to cover the department's administrative expenses that exceed the revenue generated by subsection (2)(a); and~~

~~(ii) the remaining amount to be deposited in the state special revenue fund to the credit of the board.~~

~~(c)~~(b) Revenue generated by the $5,000 fee imposed in subsection (1)(c) must be deposited in the state special revenue fund to the credit of the board.

~~(d) Revenue generated by the $2,000 fee imposed in subsection (1)(d) must be split equally between the board and the department of fish, wildlife, and parks.~~"

Section 22. Section 37-47-341, MCA, is amended to read:

"37-47-341. Grounds for denial, suspension, or revocation of license. A license or right to apply for and hold a license issued under this part may be denied, suspended, or revoked or other disciplinary conditions may be applied upon any of the following grounds:

(1) having ceased to meet all of the qualifications for holding a license, as required under this chapter and rules adopted pursuant to this chapter;

(2) fraud or deception in procuring a license;

(3) fraudulent, untruthful, or misleading advertising;

(4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in which the

sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law. ~~A person may not apply for or hold an outfitter's, guide's, or professional guide's license during any period of time in which a sentence for a felony has been deferred or suspended.~~

(5) one conviction or bond forfeiture as to a violation of the fish and game or outfitting laws or regulations of any state or the United States;

(6) a substantial breach of a contract with a participant provided that the breach is established as a matter of final judgment in a court of law;

(7) the willful employment of or contracting with an unlicensed guide or professional guide by an outfitter;

(8) negligence or misconduct while acting as an outfitter, guide, or professional guide that causes an accident or injury to the person or property of a participant;

(9) misconduct as defined by board rule; or

(10) any violation of this chapter or a rule adopted pursuant to this chapter."

NEW SECTION. **Section 23. Publication of license information.** (1) The department shall prepare and publish an information pamphlet that contains the names and addresses of all licensed outfitters.

(2) The pamphlet described in subsection (1) must be available for free distribution as early as possible each calendar year but not later than the second Friday in March of each year.

(3) The pamphlet must contain the names, license numbers, and addresses of only those outfitters who have a currently valid license.

NEW SECTION. **Section 24. Penalty for failure to comply with trust account requirements.** (1) An employee of the department may issue a citation to a broker or property manager responsible for maintenance of a trust account for failure to comply with trust account maintenance requirements as provided by rule under 37-1-319(4).

(2) The citation must include:

(a) the time and date on which the citation is issued;

(b) the name, title, mailing address, and signature of the person issuing the citation;

(c) reference to the statute or rule violated;

(d) the name, title, and mailing address of the person to whom the citation is being sent, along with information explaining the procedure for the person receiving the citation to follow to pay the fine or dispute the violation; and

(e) the amount of the applicable fine.

(3) The applicable civil fine for failure to comply with trust account maintenance requirements is $50 for each cited violation.

(4) The person who issues the citation is authorized to collect the fine and deposit the proceeds in the state special revenue account to the credit of the board.

(5) The person who is issued a citation may pay the fine or file a written dispute of the violation with the board within 5 business days of the date of issuance.

(6) A person who refuses to sign and accept a citation but who does not file a written dispute of the violation is demonstrating unprofessional conduct.

Section 25. Section 37-51-102, MCA, is amended to read:

"37-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.

(3) "Board" means the board of realty regulation provided for in 2-15-1757.

(4) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in

connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson the name of a prospective buyer or seller of real property; or

(g) advertises or represents to the public that the individual is engaged in any of the activities referred to in subsections (4)(a) through (4)(f).

(5) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who has entered into an agreement to acquire an interest in real property. The term includes tenants or potential tenants with respect to leases or rental agreements of real property.

(6) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

(7) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

(8) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a buyer.

(9) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(10) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written authorization, as provided in 37-51-314. An in-house buyer or seller agent designate may not be considered a dual agent.

(11) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark,

trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(12) "In-house buyer agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for other than the buyer with respect to the designated transaction.

(13) "In-house seller agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a seller for a designated transaction and who may not be considered to be acting for other than the seller with respect to the designated transaction.

(14) "Listing agreement" means a written agreement between a seller and broker for the sale of real estate, with the terms and conditions set out in the agreement.

(15) "Negotiations" means:

(a) efforts to act as an intermediary between parties to a real estate transaction;

(b) facilitating and participating in contract discussions;

(c) completing forms for offers, counteroffers, addendums, and other writings; and

(d) presenting offers and counteroffers.

(16) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(17) "Property manager" includes a person who for a salary, commission, or compensation of any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602.

(18) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(19) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale, exchange, or lease of an interest in real estate and includes all communication, interposition, advisement, negotiation, and contract development and closing.

(20) "Salesperson" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(21) "Seller" means a person who has entered into a listing agreement to sell real estate and includes landlords who have an interest in or are a party to a lease or rental agreement.

(22) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

(23) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

(24) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in this chapter, a relationship other than that of a statutory broker.

(25) "Supervising broker" means a licensed broker with whom a licensed salesperson is associated, either directly, indirectly, regularly, or occasionally, to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(26) "Supervising broker endorsement" means an endorsement to a broker license that is required of any licensed broker who supervises licensed salespersons performing real estate activity."

Section 26. Section 37-51-301, MCA, is amended to read:

"37-51-301. License required -- limited to persons. (1) It is unlawful for a person to engage in or conduct, directly or indirectly, or to advertise or ~~hold himself out~~ represent to the public as engaging in or conducting the business or acting in the capacity of a real estate broker or a real estate salesperson within this state without a license as a broker or salesperson or otherwise complying with this chapter.

(2) It is unlawful for a person to supervise licensed salespersons or to act in the capacity of a supervising broker unless the person has a valid and active Montana broker license and a supervising broker endorsement.

~~(2)~~(3) Corporations, partnerships, and associations may not be licensed under this chapter. A corporation or a partnership may act as a licensee if every corporate officer and every partner performing the functions of a licensee is licensed under this chapter. All officers of a corporation or all members of a partnership acting as a licensee are in violation of this chapter unless there is full compliance with this subsection."

Section 27. Section 37-51-302, MCA, is amended to read:

"37-51-302. Broker or salesperson license -- qualifications of applicant -- supervising broker

endorsement. (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesperson in a manner ~~as to safeguard~~ that safeguards the interests of the public.

(2) An applicant for a broker's license:

(a) must be at least 18 years of age;

(b) must have graduated from an accredited high school or completed an equivalent education as determined by the board;

(c) must have been actively engaged as a licensed real estate salesperson for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesperson ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesperson because of conditions existing in the area where the applicant resides, the board may waive this experience requirement;

(d) shall file an application for a license with the department; and

(e) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours, in addition to those required to secure a salesperson's license, in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law, real estate finance, and related topics.

(3) The board shall require information it considers necessary from an applicant to determine honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesperson's license:

(i) must be at least 18 years of age;

(ii) must have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board;

(iii) shall file an application for a license with the department; and

(iv) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

(b) The application must be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the

broker will actively supervise and train the applicant during the period the requested license remains in effect.

(5) The department shall issue to each licensed broker and to each licensed salesperson a license and a pocket card in a form and size that the board prescribes.

(6) (A) An applicant for a supervising broker endorsement shall meet the education and experience requirements established by the board by rule. EXCEPT THAT:

(I) ANY BROKER LICENSED PRIOR TO OCTOBER 1, 2007, IS ENTITLED TO A SUPERVISING BROKER ENDORSEMENT PROVIDED THAT THE BROKER INDICATES ON THE BROKER'S LICENSE RENEWAL FORM FOR THE 2008 CALENDAR YEAR THE BROKER'S INTENTION TO OBTAIN THE ENDORSEMENT;

(II) A BROKER WHO OBTAINS A SUPERVISING BROKER ENDORSEMENT PURSUANT TO SUBSECTION (6)(A)(I) IS SUBJECT TO THE ENDORSEMENT RENEWAL REQUIREMENTS ADOPTED BY THE BOARD BY RULE IN ORDER TO SUPERVISE ONE OR MORE LICENSED SALESPERSONS;

(III) CONTINUING EDUCATION REQUIREMENTS FOR A SUPERVISING BROKER ENDORSEMENT MAY NOT BE IN ADDITION TO THE CONTINUING EDUCATION REQUIREMENTS FOR A LICENSED BROKER WITH RESPECT TO THE TOTAL NUMBER OF HOURS OR CREDITS REQUIRED.

(B) THE BOARD MAY NOT ASSESS A LICENSING FEE FOR OBTAINING OR RENEWING A SUPERVISING BROKER ENDORSEMENT."

Section 28. Section 37-60-101, MCA, is amended to read:

"37-60-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Alarm response runner" means ~~any~~ an individual employed by an electronic security company, a contract security company, or a proprietary security organization to respond to security alarm system signals.

(2) "Armed" means an individual who at any time wears, carries, or possesses a firearm in the performance of professional duties.

~~(2)~~(3) "Armed carrier service" means any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

~~(3)~~(4) "Armed private investigator" means a private investigator who at any time wears, carries, or possesses~~, or has access to~~ a firearm in the performance of the individual's duties.

~~(4)~~(5) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, or carrier service guard~~, or alarm response runner~~ and who at any time wears or carries a

firearm in the performance of the individual's duties.

~~(5)~~(6) "Armored car service" means any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

~~(6)~~(7) "Board" means the board of private security ~~patrol officers and investigators~~ provided for in 2-15-1781.

~~(7)~~(8) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.

~~(8)~~(9) "Contract security company" means any person who ~~installs or maintains a security alarm system,~~ undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.

~~(9)~~(10) "Department" means the department of labor and industry provided for in 2-15-1701.

(11) (A) "Electronic security company" means a person who installs, services, or maintains a security alarm system and who undertakes to hire, employ, and provide alarm response runners and security alarm installers on a contractual basis to another person who does not exercise direction and control over the performance of the services rendered.

(B) THE TERM DOES NOT INCLUDE A PERSON WHOSE PRIMARY BUSINESS IS THAT OF A LOCKSMITH AND WHO MAY ALSO INSTALL CLOSED CIRCUIT TELEVISION CAMERAS AND BATTERY-OPERATED DOOR DEVICES.

(12) (a) "Fire investigator" means a person other than an individual identified in subsection (12)(b) who for any consideration:

(i) makes or agrees to make an investigation with reference to:

(A) a fire to identify evidence and determine cause of the fire; or

(B) accidents involving suspected negligence or arson for criminal or civil action;

(ii) testifies as an expert witness for investigations identified under this subsection (12); or

(iii) cooperates with law enforcement agencies in conducting fire investigations and collecting evidence relating to fires.

(b) The term does not mean an insurance adjuster, an individual designated as the state fire marshal under 2-15-2005, or a member of:

(i) a fire department as described in 7-3-1345;

(ii) law enforcement; or

(iii) an entity organized under Title 7, chapter 33.

(13) "Firearms course" means the course approved by the board and conducted by a firearms instructor.

(14) "Firearms instructor" means an individual who has been approved by the board to instruct firearms courses in the use of weapons.

~~(10)~~(15) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration ~~whatsoever~~ conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes ~~or wrongs committed or threatened~~ against the United States or any state or territory of the United States.

~~(11)~~(16) "Licensee" means a person licensed under this chapter.

~~(12)~~(17) "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work.

~~(13)~~(18) "Person" ~~includes any~~ means an individual, firm, company, association, organization, partnership, ~~and~~ or corporation.

~~(14)~~(19) "Private investigator" means a person other than an insurance adjuster who for any consideration ~~whatsoever~~ makes or agrees to make any investigation with reference to:

(a) crimes ~~or wrongs done or threatened~~ against the United States or any state or territory of the United States;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, ~~whereabouts~~ location, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for ~~fires,~~ libels, losses, accidents, or injury to persons or property; or

(e) ~~securing~~ gathering evidence to be used before any court, board, officer, or investigating committee.

~~(15)~~(20) "Private security guard" means an individual employed or assigned duties to protect a person or property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property or the direction of the movements of the public in public areas.

~~(16)~~(21) "Proprietary security organization" means any person who employs a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

~~(17) "Qualifying agent" means, in the case of a corporation, a corporate employee employed in a management capacity or, in the case of a partnership, a general or unlimited partner meeting the qualifications set forth in this chapter for the operation of a contract security company, proprietary security organization, or private investigator, whichever is applicable.~~

~~(18)~~(22) "Resident manager" means the person appointed to exercise direct supervision, control, charge, management, or operation of each branch office located in this state where the business of the licensee is conducted.

(23) (A) "Security alarm installer" means an individual who installs, services, or maintains security alarm systems to detect and signal unauthorized intrusion, movement, break-in, or criminal acts and is employed by an electronic security company.

(B) THE TERM DOES NOT INCLUDE A PERSON WHOSE PRIMARY BUSINESS IS THAT OF A LOCKSMITH AND WHO MAY ALSO INSTALL CLOSED CIRCUIT TELEVISION CAMERAS AND BATTERY-OPERATED DOOR DEVICES.

~~(19)~~(24) (a) "Security alarm system" means an assembly of equipment and devices or a single device~~, such as a solid state unit that plugs directly into a 110-volt AC line, designed~~ or a portion of a system intended to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a ~~protected premises and to which signals police, private security guards, or alarm response runners are expected to respond~~ location.

(b) The term does not include ~~alarm systems and alarm~~ systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a ~~premises~~ location.

(25) "Security company" means an electronic security company, a proprietary security organization, or a contract security company.

~~(20)~~(26) "Street patrol service" means ~~any contract security company or proprietary security organization that uses foot patrols, motor vehicles, or any other means of transportation to maintain public order or detect criminal activities in public areas or thoroughfares~~ a person providing patrols by means of foot, vehicle, or other method of transportation using public street, thoroughfares, or property in the performance of the person's duties and responsibilities.

~~(21)~~(27) "Unarmed private investigator" means a private investigator who does not wear, carry, or possess~~, or have access to~~ a firearm in the performance of the individual's duties.

~~(22)~~(28) "Unarmed private security guard" means an individual who is employed by a contract security company or a proprietary security organization, whose duty or any portion of whose duty is that of a private security guard, armored car service guard, or alarm response runner, and who does not wear ~~or~~, carry, or possess a firearm in the performance of those duties."

Section 29. Section 37-60-103, MCA, is amended to read:

"37-60-103. Purpose. The purpose of this chapter is to increase the levels of integrity, competency, and performance of ~~private~~ security ~~personnel~~ companies and their employees who are required to be licensed, firearms instructors, fire investigators, and private investigators ~~in order~~ to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by ~~private~~ security ~~personnel~~ companies and their licensed employees, firearms instructors, fire investigators, or private investigators."

Section 30. Section 37-60-202, MCA, is amended to read:

"37-60-202. Rulemaking power. The board shall adopt and enforce rules:

(1) fixing the qualifications of resident managers, ~~qualifying agents,~~ licensees, and holders of identification cards, in addition to those prescribed in this chapter, necessary to promote and protect the public welfare;

(2) establishing, in accordance with 37-1-134, application fees for original ~~or renewal~~ licenses and identification cards, and providing for refunding of any fees;

(3) (a) ~~prohibiting~~ requiring approval of the board prior to the establishment of branch offices of any licensee~~, except a proprietary security organization, without approval by the board~~; and

(b) establishing qualification requirements and license fees for branch offices identified in subsection (3)(a);

(4) for the certification of private investigator ~~and~~, private security guard, security alarm installer, and alarm response runner training programs, including the certification of firearms training programs;

(5) for the licensure of firearms instructors;

(6) for the approval of weapons;

(7) requiring the maintenance of records;

(8) requiring licensees to file an insurance policy with the board; and

(9) providing for the issuance of probationary identification cards for private investigators and security alarm installers who do not meet the requirements for age, employment experience, ~~and~~ or written examination."

Section 31. Section 37-60-301, MCA, is amended to read:

"37-60-301. License required. (1) Except as provided in 37-60-105 ~~and 37-60-315~~, it is unlawful for any person to act as or perform the duties, as defined in 37-60-101, of a contract security company ~~or~~, a proprietary security organization, an electronic security company, a branch office, a private investigator, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard without having first obtained a license from the board. ~~Those persons licensed on April 18, 1983, shall retain their current licensure status and shall renew their licenses on the renewal date as prescribed by the department.~~

(2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that the person is licensed as ~~a private investigator,~~ a contract security company, a proprietary security organization, an electronic security company, a branch office, a private investigator, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard.

(3) A person appointed by the court as a confidential intermediary under 42-6-104 is not required to be licensed under this chapter. A person who is licensed under this chapter is not authorized to act as a confidential intermediary, as defined in 42-1-103, without meeting the requirements of 42-6-104.

(4) A person who knowingly engages an unlicensed ~~private investigator, private security guard, or~~ contract security company, proprietary security organization, electronic security company, branch office, private investigator, fire investigator, security alarm installer, alarm response runner, resident manager, certified firearms instructor, or private security guard is guilty of a misdemeanor punishable under 37-60-411."

Section 32. Section 37-60-302, MCA, is amended to read:

"37-60-302. ~~Qualifying agent and resident~~ Resident manager required ~~-- substitution~~. (1) Any ~~out-of-state~~ contract security company, electronic security company, or proprietary security organization that applies for a license under this chapter shall~~, before application to the board,~~ appoint for the duration of the license ~~a qualifying agent and~~ a resident manager. ~~Every qualifying agent and~~ Each resident manager shall satisfy the appropriate licensing requirements of this chapter.

(2) A separate resident manager must be appointed for each branch office located in this state, and the business of the applicant or licensee must be conducted under the resident manager's direct supervision and

control.

(3) If a ~~qualifying agent or~~ resident manager for any reason ceases to perform the duties of a ~~qualifying agent or~~ resident manager on a regular basis, the licensee shall promptly notify the board of that fact ~~and of the name of a substitute individual, who shall apply to the board for continuation of the license. Pending application by and board action upon the application of the substitute, the board may suspend the license or extend it for a reasonable time~~."

Section 33. Section 37-60-303, MCA, is amended to read:

"37-60-303. License qualifications. (1) Except as provided in subsection (7)(a), an applicant for licensure under this chapter is subject to the provisions of this section and shall submit evidence under oath that the applicant:

(a) is at least 18 years of age;

(b) is a citizen of the United States or a legal, permanent resident of the United States;

(c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

(d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;

(e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;

(f) is of good moral character; and

(g) has complied with other experience qualifications as may be set by the rules of the board.

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard, security alarm installer, or alarm response runner shall:

(a) complete the ~~training~~ requirements of a ~~private security guard~~ training program certified by the board and provide, on a form prescribed by the board, written notice of satisfactory completion of the training; and

(b) fulfill other requirements as the board may by rule prescribe.

(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that the applicant:

(a) is at least 21 years of age;

(b) has at least a high school education or the equivalent;

(c) has not been dishonorably discharged from any branch of the United States military service; and

(d) has fulfilled any other requirements as the board may by rule prescribe.

(4) The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.

(5) An applicant who will wear, ~~or~~ carry, or possess a firearm in performance of the applicant's duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as the board may by rule prescribe.

(6) Except for an applicant subject to the provisions of subsection (7)(a), the board shall require a background investigation of each applicant for licensure under this chapter that includes a fingerprint check by the Montana department of justice and the federal bureau of investigation.

(7) (a) A firm, company, association, partnership, limited liability company, corporation, or other entity that intends to engage in business governed by the provisions of this chapter must be incorporated under the laws of this state or qualified to do business within this state and must be licensed by the board.

(b) Individual employees, officers, directors, agents, or other representatives of an entity described in subsection (7)(a) who engage in duties that are subject to the provisions of this part must be licensed pursuant to the requirements of this part."

Section 34. Section 37-60-304, MCA, is amended to read:

"37-60-304. Licenses -- application form and content. (1) ~~Except as provided in 37-60-303(7), an~~ An application for a license must be submitted to the department and accompanied by the application fee set by the board.

(2) An application must be made under oath and must include:

(a) the full name and address of the applicant;

(b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, an electronic security company, a branch office, a certified firearms instructor, a private investigator, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, or a private security guard;

(e) except for an applicant pursuant to 37-60-303(7)(a), one recent photograph of the applicant, of a type prescribed by the department, and one classifiable set of the applicant's fingerprints;

(f) a statement of the applicant's age and experience qualifications, except for an applicant pursuant to 37-60-303(7)(a); and

(g) other information, evidence, statements, or documents as may be prescribed by the rules of the board.

(3) The board shall verify the statements in the application ~~and the applicant's moral character~~.

(4) The submittal of fingerprints is a prerequisite to the issuance of a license, except under 37-60-303(7)(a), by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation."

Section 35. Section 37-60-309, MCA, is amended to read:

"37-60-309. Form of license and identification cards. The license~~,~~ and identification card~~, and temporary identification card for temporary security guards~~ must be in a form determined by the board."

Section 36. Section 37-60-310, MCA, is amended to read:

"37-60-310. Display of license and identification card. (1) A license must at all times be posted in a conspicuous place in the principal place of business of the licensee.

(2) A holder of an identification card ~~or a temporary identification card~~ shall carry the card while performing the cardholder's duties. A peace officer of this state or any of its political subdivisions may request to see the card at any reasonable time, and the card must be shown."

Section 37. Section 37-60-314, MCA, is amended to read:

"37-60-314. Nontransferability of license -- record changes. (1) ~~No~~ A license issued under this chapter is not transferable.

(2) A licensee shall notify the board within 5 days of any change in its officers or directors, name, address, employment, or other material change in the information previously furnished or required to be furnished to the board or any other material change or occurrence that could reasonably be expected to affect the licensee's right to a license. Upon ~~such~~ the change or occurrence, the board may suspend or revoke the license or may allow the business to be carried on for a temporary period under terms and conditions as the board may require.

(3) This section may not be applied to restrict the sale of a business if the buyer qualifies for a license under the provisions of this chapter."

Section 38. Section 37-60-402, MCA, is amended to read:

"37-60-402. Confidentiality of information -- false reports -- badges and uniforms -- illegal entry.

(1) A licensee or officer, director, partner, or manager of a licensee may divulge to any law enforcement officer or county attorney or ~~his~~ representative of the county attorney any information ~~he~~ that the licensee or officer, director, partner, or manager of a licensee may acquire as to any criminal offense~~,~~ but ~~he~~ may not divulge to any other person, except as required by law, any information acquired ~~by him~~ except at the direction of the employer or client for whom the information was obtained.

(2) ~~No~~ A licensee or officer, director, partner, manager, or employee of a licensee may not knowingly make any false report to ~~his~~ an employer or client for whom information was being obtained.

(3) ~~No~~ A written report may not be submitted to a client except by the licensee~~, qualifying manager,~~ or a person authorized by ~~either of them~~ the licensee, and the person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in the report are true and correct.

(4) ~~No~~ A licensee or officer, director, partner, manager, or employee of a licensee may not use a title, wear a uniform, use an identification card, or make any statement with the intent to give an impression that ~~he~~ the licensee or officer, director, partner, manager, or employee of a licensee is connected in any way with the federal government, a state government, a law enforcement agency, or any political subdivision of a state government unless the licensee has a contract with the agency.

(5) ~~No~~ A licensee or officer, director, partner, manager, or employee of a licensee may not enter any private building or portion ~~thereof~~ of a private building without the consent of the owner or of the person in legal possession ~~thereof~~ of the private building."

Section 39. Section 37-60-403, MCA, is amended to read:

"37-60-403. Licensee advertising. Every advertisement by a licensee soliciting or advertising business ~~shall~~ must contain ~~his~~ the licensee's name ~~and~~, address, and license number as they appear in the records of the board."

Section 40. Section 37-60-409, MCA, is amended to read:

"37-60-409. Installation of new security alarm systems by electrician. An electrician who has received a license from the department pursuant to 37-68-301 may install new security alarm systems under the direction of a ~~journeyman~~ licensed security alarm installer~~, but such work~~. Work performed by an electrician under this section is subject to inspection and approval by a security alarm installer licensed under 37-60-303."

Section 41. Section 37-73-208, MCA, is amended to read:

"37-73-208. Elevator inspector's license -- temporary license. (1) A person intending to engage in work as an elevator inspector shall apply for a license as an elevator inspector on forms provided by the department.

(2) The department may not grant an applicant an elevator inspector's license unless the applicant demonstrates that the applicant meets the current national standards for the qualifications of elevator inspectors. The department shall designate by rule the national standards that must be met by an applicant.

(3) A newly hired elevator inspector who is not properly certified may conduct inspections for up to 6 months under a temporary license if the elevator inspector is supervised during the 6-month period of temporary licensure by appropriately certified personnel."

~~**Section 43.** Section 50-4-504, MCA, is amended to read:~~

~~**"50-4-504. Definitions.** As used in this part, the following definitions apply:~~

~~(1) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.~~

~~(2) "Health care" includes both physical health care and mental health care.~~

~~(3) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory outpatient care to two or more unrelated persons. The term includes all facilities and institutions included in the definition of health care facility contained in 50-5-101. The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing.~~

~~(4) "Health care provider" or "provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.~~

~~(5) "Health insurer" means any health insurance company, health service corporation, health maintenance organization, insurer providing disability insurance as described in 33-1-207, and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and private entities."~~

~~**Section 44.** Section 50-4-605, MCA, is amended to read:~~

~~**"50-4-605. Definitions.** For the purposes of this part, the following definitions apply:~~

~~(1) "Certificate of public advantage" or "certificate" means a written certificate issued by the department as evidence of the department's intention that the implementation of a cooperative agreement, when actively~~

supervised by the department, receive state action immunity from prosecution as a violation of state or federal antitrust laws.

(2) "Cooperative agreement" or "agreement" means a written agreement between two or more health care facilities for the sharing, allocation, or referral of patients; personnel; instructional programs; emergency medical services; support services and facilities; medical, diagnostic, or laboratory facilities or procedures; or other services customarily offered by health care facilities.

(3) "Department" means the department of justice provided for in Title 2, chapter 15, part 20.

(4) (a) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory outpatient care to two or more unrelated persons. The term includes all facilities and institutions included in the definition of health care facility contained in 50-5-101.

(b) The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing."

Section 45. Section 50-5-101, MCA, is amended to read:

"50-5-101. (Temporary) Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys ambulatory outpatient centers for surgical centers services upon their requests and grants accreditation status to the ambulatory outpatient centers for surgical centers services that it finds meet its standards and requirements.

(3) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

(4) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

~~(b) As used in this subsection (5), the following definitions apply:~~

~~(i) "Aged person" means a person as defined by department rule as aged.~~

~~(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.~~

~~(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.~~

~~(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as, including bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.~~

~~(B) The term does not include the administration of prescriptive medications.~~

~~(6) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.~~

~~(7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.~~

~~(8) "Capital expenditure" means:~~

~~(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or~~

~~(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.~~

~~(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.~~

~~(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.~~

~~(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease~~

~~or assessment of a medical condition.~~

~~(12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.~~

~~(13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.~~

~~(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.~~

~~(15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.~~

~~(16) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.~~

~~(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.~~

~~(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.~~

~~(19) "Department" means the department of public health and human services provided for in 2-15-2201.~~

~~(20) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.~~

~~(21) "Federal acts" means federal statutes for the construction of health care facilities.~~

~~(22) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.~~

~~(23) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home~~

~~health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.~~

~~(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.~~

~~(24) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.~~

~~(25) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.~~

~~(26) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.~~

~~(27) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:~~

~~(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and~~

~~(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.~~

~~(28) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Except as otherwise provided by law, services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes:~~

~~(i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and~~

~~tubercular patients; and~~

~~(ii) specialty hospitals.~~

~~(b) The term does not include critical access hospitals.~~

~~(29) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:~~

~~(a) an "infirmary--A" provides outpatient and inpatient care;~~

~~(b) an "infirmary--B" provides outpatient care only.~~

~~(30) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.~~

~~(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.~~

~~(31) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.~~

~~(32) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.~~

~~(33) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.~~

~~(34) "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.~~

~~(35) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.~~

~~(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.~~

~~(36) "Medical assistance facility" means a facility that meets both of the following:~~

~~(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.~~

~~(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.~~

~~(37) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.~~

~~(38) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.~~

~~(39) "Offer" means the representation by a health care facility that it can provide specific health services.~~

~~(40) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:~~

~~(i) serves either adjudicated or nonadjudicated youth;~~

~~(ii) charges a fee for its services; and~~

~~(iii) provides all or part of its services in the outdoors.~~

~~(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.~~

~~(41) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.~~

~~(42) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.~~

~~(43) "Patient" means an individual obtaining services, including skilled nursing care, from a health care~~

~~facility.~~

~~(44) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.~~

~~(45) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.~~

~~(46) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.~~

~~(47) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.~~

~~(48) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.~~

~~(49) "Resident" means an individual who is in a long-term care facility or in a residential care facility.~~

~~(50) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.~~

~~(51) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.~~

~~(52) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.~~

~~(53) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.~~

~~(54) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.~~

~~(55) "Specialty hospital" means a specialty hospital as defined in 50-5-245.~~

~~(56) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.~~

~~(57) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient. (Terminates July 1, 2007--sec. 6, Ch. 365, L. 2005.)~~

~~**50-5-101. (Effective July 1, 2007) Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:~~

~~(1) "Accreditation" means a designation of approval.~~

~~(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys ambulatory outpatient centers for surgical centers services upon their requests and grants accreditation status to the ambulatory outpatient centers for surgical centers services that it finds meet its standards and requirements.~~

~~(3) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.~~

~~(4) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.~~

~~(5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.~~

~~(b) As used in this subsection (5), the following definitions apply:~~

~~(i) "Aged person" means a person as defined by department rule as aged.~~

~~(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.~~

~~(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.~~

~~(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as, including bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.~~

~~(B) The term does not include the administration of prescriptive medications.~~

~~(6) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a~~

~~third-party payer who reimburses health care facilities in the area affected by the proposal.~~

~~(7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.~~

~~(8) "Capital expenditure" means:~~

~~(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or~~

~~(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.~~

~~(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.~~

~~(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.~~

~~(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.~~

~~(12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.~~

~~(13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.~~

~~(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.~~

~~(15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.~~

~~(16) "Construction" means the physical erection of a health care facility and any stage of the physical~~

~~erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.~~

~~(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.~~

~~(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.~~

~~(19) "Department" means the department of public health and human services provided for in 2-15-2201.~~

~~(20) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.~~

~~(21) "Federal acts" means federal statutes for the construction of health care facilities.~~

~~(22) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.~~

~~(23) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.~~

~~(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.~~

~~(24) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.~~

~~(25) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.~~

~~(26) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral~~

~~medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.~~

~~(27) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:~~

~~(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and~~

~~(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.~~

~~(28) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients.~~

~~(b) The term does not include critical access hospitals.~~

~~(29) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:~~

~~(a) an "infirmary--A" provides outpatient and inpatient care;~~

~~(b) an "infirmary--B" provides outpatient care only.~~

~~(30) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.~~

~~(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.~~

~~(31) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.~~

~~(32) "Intermediate nursing care" means the provision of nursing care services, health-related services,~~

~~and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.~~

~~(33) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.~~

~~(34) "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.~~

~~(35) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.~~

~~(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.~~

~~(36) "Medical assistance facility" means a facility that meets both of the following:~~

~~(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.~~

~~(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.~~

~~(37) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.~~

~~(38) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.~~

~~(39) "Offer" means the representation by a health care facility that it can provide specific health services.~~

~~(40) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:~~

~~(i) serves either adjudicated or nonadjudicated youth;~~

~~(ii) charges a fee for its services; and~~

~~(iii) provides all or part of its services in the outdoors.~~

~~(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.~~

~~(41) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.~~

~~(42) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.~~

~~(43) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.~~

~~(44) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.~~

~~(45) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.~~

~~(46) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.~~

~~(47) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.~~

~~(48) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.~~

~~(49) "Resident" means an individual who is in a long-term care facility or in a residential care facility.~~

~~(50) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.~~

~~(51) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.~~

~~(52) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.~~

~~(53) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.~~

~~(54) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.~~

~~(55) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.~~

~~(56) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient."~~

~~**Section 46.** Section 50-5-301, MCA, is amended to read:~~

~~**"50-5-301. When certificate of need is required -- definitions.** (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, the person may not initiate any of the following:~~

~~(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure that exceeds $1.5 million, other than to acquire an existing health care facility. The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant with respect to which an expenditure is made must be included in determining if the expenditure exceeds $1.5 million.~~

~~(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site to another, unless:~~

~~(i) the number of beds involved is 10 or less or 10% or less of the licensed beds, if fractional, rounded down to the nearest whole number, whichever figure is smaller, and no beds have been added or relocated during the 2 years prior to the date on which the letter of intent for the proposal is received;~~

~~(ii) a letter of intent is submitted to the department; and~~

~~(iii) the department determines that the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health care facilities plan;~~

~~(c) the addition of a health service that is offered by or on behalf of a health care facility that was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and that will result in additional annual operating and amortization expenses of $150,000 or more;~~

~~(d) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:~~

~~(i) the person submits the letter of intent required by 50-5-302(2); and~~

~~(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;~~

~~(e) the construction, development, or other establishment of a health care facility that is being replaced or that did not previously exist, by any person, including another type of health care facility;~~

~~(f) the expansion of the geographical service area of a home health agency;~~

~~(g) the use of hospital beds in excess of five to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101;~~

~~(h) the provision by a hospital of services for home health care, long-term care, or inpatient chemical dependency treatment; or~~

~~(i) the construction, development, or other establishment of a facility for ambulatory~~ outpatient ~~surgical care through an outpatient center for surgical services in a county with a population of 20,000 or less according to the most recent federal census or estimate.~~

~~(2) For purposes of this part, the following definitions apply:~~

~~(a) "Health care facility" or "facility" means a nonfederal home health agency, a long-term care facility, or an inpatient chemical dependency facility. The term does not include:~~

~~(i) a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection (1)(h);~~

~~(ii) an office of a private physician, dentist, or other physical or mental health care professionals, including licensed addiction counselors; or~~

~~(iii) a rehabilitation facility or an outpatient center for surgical services.~~

~~(b) (i) "Long-term care facility" means an entity that provides skilled nursing care, intermediate nursing~~

~~care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more individuals.~~

~~(ii) The term does not include residential care facilities, as defined in 50-5-101; community homes for persons with developmental disabilities, licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.~~

~~(3) This section may not be construed to require a health care facility to obtain a certificate of need for a nonreviewable service that would not be subject to a certificate of need if undertaken by a person other than a health care facility."~~

Section 42. Section 50-32-314, MCA, is amended to read:

"50-32-314. Board to adopt rules for registration of ~~ambulatory~~ outpatient center for surgical ~~facilities~~ services. (1) The board shall~~, by October 1, 1999,~~ adopt rules to provide for the registration of ~~ambulatory~~ any outpatient center for surgical ~~facilities~~ services pursuant to this part. The rules must categorize ~~ambulatory~~ the outpatient center for surgical ~~facilities~~ services as a "distributor" pursuant to 50-32-101(12) or other category of registrant as determined by the board.

(2) If the board determines that ~~ambulatory~~ an outpatient center for surgical ~~facilities require~~ services requires the services of a pharmacist in order to be registered, the board shall allow ~~those facilities~~ that center to use the services of a consulting pharmacist to satisfy the obligation imposed by the board.

(3) This section does not affect any existing registration requirement ~~that~~ pursuant to this part for persons providing dangerous drugs to an ~~ambulatory~~ outpatient center for surgical ~~facility~~ services or persons administering dangerous drugs within or as the result of procedures performed at an ~~ambulatory~~ outpatient center for surgical ~~facility be registered pursuant to this part~~ services."

Section 43. Section 71-3-1111, MCA, is amended to read:

"71-3-1111. Short title. This part may be cited as the "Physician, Nurse, Physical Therapist, Occupational Therapist, ACUPUNCTURIST, Chiropractor, Dentist, Psychologist, Licensed Social Worker, Licensed Professional Counselor, Hospital, and ~~Ambulatory~~ Outpatient Center for Surgical ~~Facility~~ Services Lien Act"."

Section 44. Section 71-3-1112, MCA, is amended to read:

"71-3-1112. Purpose. The purpose of this part is to establish lien rights for physicians, nurses, physical therapists, occupational therapists, ACUPUNCTURISTS, chiropractors, dentists, hospitals, and ~~ambulatory~~ outpatient centers for surgical ~~facilities~~ services for the value of services rendered and products provided for the diagnosis and treatment of medical conditions and to establish lien rights for psychologists, licensed social workers, and licensed professional counselors for services rendered and products provided when a person receiving treatment:

(1) is injured through the fault or neglect of another; or

(2) is either insured or a beneficiary under insurance."

Section 45. Section 71-3-1113, MCA, is amended to read:

"71-3-1113. Definitions. As used in this part, the following definitions apply:

~~(1) "Ambulatory surgical facility" means a facility registered as provided in 50-32-314.~~

~~(2)~~(1) "Beneficiary" means a person entitled to insurance benefits.

~~(3)~~(2) "Dentist" means a person practicing dentistry as provided in 37-4-101.

~~(4)~~(3) "Insurance" means a contract ~~whereby~~ through which a person, the insurer, undertakes to indemnify another, the insured, or pay or provide a determinable amount or benefit upon determinable contingencies.

~~(5)~~(4) "Insurer" includes a health service corporation.

(5) "Outpatient center for surgical services" means a facility registered as provided in 50-32-314.

(6) "Person" means an individual, a corporation, an organization, or other legal entity."

Section 46. Section 71-3-1114, MCA, is amended to read:

"71-3-1114. Liens of physicians, nurses, physical therapists, occupational therapists, ACUPUNCTURISTS, chiropractors, dentists, hospitals, and ~~ambulatory~~ outpatient center for surgical ~~facilities~~ services and liens of psychologists, licensed social workers, and licensed professional counselors. (1) (a) Upon the required notice of a lien being given, there is a lien as provided in subsection (1)(b) whenever:

(i) a physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services renders services or provides products for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor renders services or provides products; and

(iii) the services rendered or products provided under subsection (1)(a)(i) or (1)(a)(ii) are rendered or

provided to a person injured through the fault or neglect of another.

(b) The physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, hospital, ~~ambulatory~~ outpatient center for surgical ~~facility~~ services, psychologist, licensed social worker, or licensed professional counselor has a lien for the value of services rendered or products provided on:

(i) any claim or cause of action that the injured person or the injured person's estate or successors may have for injury, disease, or death;

(ii) any judgment that the injured person or the estate or successors may obtain for injury, disease, or death; and

(iii) all money paid in satisfaction of the judgment or in settlement of the claim or cause of action.

(2) (a) If a person is an insured or a beneficiary under insurance that provides coverage in the event of injury or disease, there is a lien as provided in subsection (2)(b) upon required notice of a lien being given by:

(i) a physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services for the value of services rendered or products provided for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor for services rendered or products provided.

(b) The lien is on all proceeds or payments, except payments for property damage, payable by the insurer.

(3) A physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, hospital, ~~ambulatory~~ outpatient center for surgical ~~facility~~ services, psychologist, licensed social worker, or licensed professional counselor claiming a lien under this part is not liable for attorney fees and costs incurred by the injured person, the injured person's estate or successors, or a beneficiary in connection with obtaining payments or benefits subject to a lien under this part. The lien of an attorney provided for in 37-61-420 has priority over a lien created by this part."

Section 47. Section 71-3-1115, MCA, is amended to read:

"71-3-1115. Notice of lien. (1) A physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services claiming a lien shall serve written notice upon the person and upon the insurer, if any, against whom liability for injury, disease, counseling service, or death is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that

a lien is claimed.

(2) A physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services claiming a lien upon proceeds or payments payable by an insurer shall serve written notice upon the insurer against whom the lien is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed."

Section 48. Section 71-3-1117, MCA, is amended to read:

"71-3-1117. Liability for failure to recognize lien. If any insurer or person, after receiving notice of a lien, makes payment on account of injury, disease, counseling service, or death and the amount of the lien claimed by any physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services has not been paid, the insurer or person is liable to the physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services for the reasonable value of the services."

Section 49. Section 71-3-1118, MCA, is amended to read:

"71-3-1118. Applicability. (1) Except as provided in subsection (2), this part does not apply to compensation awarded to workers for injury, disease, or death pursuant to the Workers' Compensation Act.

(2) This part applies to all payments awarded for medical, therapy, ACUPUNCTURE, chiropractic, dentistry, counseling, and hospital services pursuant to the acts referred to in subsection (1).

(3) This part does not apply to any benefits payable under:

(a) a policy of life insurance or group life insurance;

(b) a contract of disability insurance, except benefits payable in reimbursement for services rendered by a physician, nurse, physical therapist, occupational therapist, ACUPUNCTURIST, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ outpatient center for surgical ~~facility~~ services; or

(c) an annuity contract or to pension benefits payable under a qualified pension plan."

NEW SECTION. **Section 50. Repealer.** Sections 37-60-315 and 37-60-406, MCA, are repealed.

NEW SECTION. **Section 51. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 37, chapter 65, and the provisions of Title 37, chapter 65, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 37, chapter 69, and the provisions of Title 37, chapter 69, apply to [section 2].

(3) [Section ~~24~~ 23] is intended to be codified as an integral part of Title 37, chapter 47, and the provisions of Title 37, chapter 47, apply to [section ~~24~~ 23].

(4) [Section ~~25~~ 24] is intended to be codified as an integral part of Title 37, chapter 51, part 3, and the provisions of Title 37, chapter 51, part 3, apply to [section ~~25~~ 24].

NEW SECTION. **Section 52. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

- END -

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2009 Biennium

Bill #	SB0153	**Title:**	Revise professional and occupational licensing laws
Primary Sponsor:	Cocchiarella, V.	**Status:**	As Introduced

☐ Significant Local Gov Impact ☑ Include in HB 2 ☐ Technical Concerns

☐ Included in the Executive Budget ☐ Significant Long-Term Impacts ☐ Dedicated Revenue Form Attached

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Expenditures:				
State Special Revenue	$11,290	$11,290	$11,572	$11,862
Revenue:				
State Special Revenue	$42,500	$42,500	$42,500	$42,500
Net Impact-General Fund Balance	$0	$0	$0	$0

Description of Fiscal Impact:

This bill revises and clarifies various professional and occupational licensing statutes. In addition, this bill expands the board of Realty Regulation from five to seven members, establishes a site and fine for real estate audits, and provides real estate broker endorsement.

FISCAL ANALYSIS

Assumptions:

1. Two additional board members for the Board of Realty Regulation will attend 10 meetings each per year of the biennium.
2. Per diem is $50 per day x 10 meeting days x 2 board members = $1,000
3. Average travel per meeting is 500 miles round trip. Ten meetings per year x 500 miles per trip x $0.445/mile x 2 members = $4,450.
4. The state meal allowance is $ 23/day, but since board members will be paid meals during travel status, the average will be $34 x 10 meetings per year x 2 members = $680.

5. Lodging cost is $60/day x 10 meetings per year x 2 members = $1,200.
6. Training materials and supplies are estimated at $405 per year x 2 board members = $810.
7. Real Estate Broker endorsements will cost $25 per licensee, per fiscal year. The board expects 1,500 brokers to receive this endorsement for a total of $37,500.
8. An average of 20 additional audits will be performed annually.
9. Average travel per audit is 200 miles. Twenty additional audits per year x 200 miles per outing x $0.445/mile = $1,780.
10. Ten of the 20 audits will require an overnight stay. Lodging cost is $60/day x 10 additional audits per year = $600.
11. The state meal allowance is $23/day ($23 x 10 non-overnight audits = $230). Since 10 audits will typically involve overnight travel, each overnight auditor will average $34 x 10 overnight stays = $340. Total meal increase is $570.
12. Audit supplies will average $200 per fiscal year.
13. The auditor for the Board of Realty Regulation will issue an estimated 100 citations per year of the biennium for not complying with trust account maintenance requirements. The fine for each violation will be $50. ($5,000/ year revenue).
14. For FY 2010 and FY 2011, a 2.5% inflation factor is assumed for increases in personal services and operating expenses.
15. The Board of Realty Regulation will not see an increase in fees because of this bill.
16. All other costs associated with these changes will be absorbed by the boards.

Expenditures:				
Personal Services	$1,000	$1,000	$1,025	$1,051
Operating Expenses	$10,290	$10,290	$10,547	$10,811
Funding of Expenditures:				
State Special Revenue (02)	$11,290	$11,290	$11,572	$11,862
Revenues:				
State Special Revenue (02)	$42,500	$42,500	$42,500	$42,500
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
State Special Revenue (02)	$31,210	$31,210	$30,928	$30,638

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*

MINUTES

MONTANA SENATE
60th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS, LABOR, AND ECONOMIC AFFAIRS

Call to Order: By **CHAIRMAN VICKI COCCHIARELLA**, on January 18, 2007 at 9:00 A.M., in Room 102 Capitol.

ROLL CALL

Members Present:
Sen. Vicki Cocchiarella, Chairman (D)
Sen. Joe Balyeat (R)
Sen. Roy Brown (R)
Sen. John Esp (R)
Sen. Verdell Jackson (R)
Sen. Lane L. Larson (D)
Sen. Don Ryan (D)
Sen. Frank Smith (D)
Sen. Carolyn Squires (D)
Sen. Donald J. Steinbeisser (R)
Sen. Joseph (Joe) Tropila (D)

Members Excused: None.

Members Absent: None.

Staff Present: Claudia Johnson, Committee Secretary
Pat Murdo, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:
Hearing & Date Posted: SB 53, 1/9/2007; SB 54, 1/9/2007; SB 153, 1/9/2007
Executive Action: None.

00:00:31 Chairwoman Cocchiarella

HEARING ON SB 53

Opening Statement by Sponsor:

00:03:08 **SEN. VICKI COCCHIARELLA (D), SD 47**, opened the hearing on **SB 53**, Establish procedures for professional and occupational licensing boards.

EXHIBIT(bus12a01)

Proponents:

00:10:58 Mona Jamison, Montana Physical Therapist Association

00:14:32 Steve Yeakel, Montana Funeral Director's Association

Opponents: None.

Informational Testimony:

00:16:17 Joan Caldwell, Bureau Chief, Occupational Licensing, Department of Labor and Industry (DLI)

00:16:35 Lisa Addington, Bureau Chief, Health Care Licensing, DLI

Questions from Committee Members and Responses:

00:17:14 Sen. Balyeat to Sen. Cocchiarella

00:22:28 Sen. Squires to Sen. Cocchiarella

00:30:13 Sen. Brown to Sen. Cocchiarella

Closing by Sponsor:

00:32:52 Sen. Cocchiarella

HEARING ON SB 54

Opening Statement by Sponsor:

00:33:46 **SEN. VICKI COCCHIARELLA (D), SD 47**, opened the hearing on **SB 54**, Generally revise professional and occupational licensing boards.

EXHIBIT(bus12a02)

Proponents:

00:42:38 Robert Throssell, Idaho/Montana Chapter of Architects Society

00:43:49 Shelley Engler, Architectural Engineer

00:46:15 Kent Watson, Licensed Landscaper, and Architects, and Idaho/Montana Chair for Chapter of Architects Society

00:48:25 Ron Yates, Licensed Landscaper and Architect

00:51:07 William Grant, Practicing Architect

EXHIBIT(bus12a03)

00:55:10 James Kembel, Montana Board of Architects, DLI

EXHIBIT(bus12a04)

00:55:53 Mike Dowling, Montana Chapter of Architects

00:59:25 Sen. Jackson

Opponents:

Informational Testimony:

00:59:56 Jill Caldwell, Bureau Chief, Occupational Licensing, DLI

01:00:13 Lisa Addington, BC Health Care Licensing, DLI

Questions from Committee Members and Responses:

01:00:49 Sen. Squires to Jill Caldwell, DLI

01:03:41 Sen. Squires to Mark Cadwallader, DLI

01:06:02 Sen. Ryan to Mark Cadwallader, DLI

01:07:47 Sen. Brown to Mike Dowling, Montana Chapter of Architects

Closing by Sponsor:

01:10:34 Sen. Cocchiarella

HEARING ON SB 153

Opening Statement by Sponsor:

01:13:13 **SEN. VICKI COCCHIARELLA (D), SD 47,** opened the hearing on **SB 153,** Revise professional and occupational licensing laws.

EXHIBIT(bus12a05)
EXHIBIT(bus12a06)

Proponents:

01:14:17 Jack Kane, Administrator, Department of Labor and Industry (DLI)

01:18:14 Peggy Ternk, Montana Association of Realtors (MAR)

01:18:52 Sue Weingartner, Executive Director, Optometric Association

EXHIBIT(bus12a07)

01:19:55 Casey Blumenthal, Montana Hospital Association

01:21:26 Tonya Brekee, President of Acupuncturist Association

01:22:53 Jane Hamman, Montana Association Acupuncturist and Oriental Medicine

Opponents: None.

Informational Testimony:

01:25:24 Roy Kemp, Deputy Administrator, Quality Assurance Division, Department of Public Health and Human Services (DPHHS)

Questions from Committee Members and Responses:

01:26:06 Sen. Tropila to Peggy Ternk, MAR

01:26:48 Sen. Tropila to Jill Caldwell, DLI

01:27:21 Sen. Balyeat to Jill Caldwell, DLI

Closing by Sponsor:

Sen. Cocchiarella

ADJOURNMENT

Adjournment: 10:35 A.M.

_____
SEN. VICKI COCCHIARELLA, Chairman

_____
CLAUDIA JOHNSON, Secretary

VC/cj

Additional Exhibits:

EXHIBIT(bus12aad.pdf)

BUSINESS, LABOR & ECONOMIC AFFAIRS
EXHIBIT No. 5
DATE 1-18-07
BILL No. SB 153

SB 153
Senator Vicki Cocchiarella
AN ACT REVISING PROFESSIONAL AND OCCUPATIONAL LICENSING LAWS

This is a general revision bill, removing outdated references, addressing audit citations, and responding to issues from various licensing boards and programs of the Department.

The bill:

- Affects the 40 licensing boards and programs administratively attached to the Department of Labor and Industry.
- Creates an emeritus status for architects
- Creates a retirement license for plumbers
- Revises the Board of Realty Regulation
- Revises and renames the Board of Private Security
- Amends and clarifies the definition of license
- Allows boards to require state, regional or national certification for license renewal
- Expands definition of unprofessional conduct for licensing programs
- Adds elevator contractors, mechanics and inspectors to those covered by unprofessional conduct
- Revises the name of ambulatory surgical facilities
- Adds naturopathic physician, physician assistant, and optometrist to definitions relating to nursing
- Removes the oath requirement on nursing applications
- Removes age requirement and high school diploma for optometrists
- Clarifies the Department designs forms for the Board of Speech-Language Pathologists and Audiologists
- Clarifies trainee license terminates for hearing aid dispenser if examination is failed
- Changes the term "certificate of registration" to "license" for Board of Veterinary Medicine
- Removes redundant rulemaking authority for the Board of Alternative Health Care Practitioners in regards to military licensees
- Allows direct application and payment to the naturopathic testing agency
- Clarifies that respiratory care practitioners students may not receive compensation
- Revises fee distribution between the department and the department of fish wildlife and parks
- Clarifies conditions for denying, suspending or revoking an outfitter's, guide's or professional guide's license
- Requires the department to publish a pamphlet of Outfitter names and addresses
- Provides penalties for noncompliance by real estate brokers or property managers with trust account provisions
- Creates endorsement provisions for a supervising real estate broker
- Creates a temporary license for elevator inspectors

BUSINESS, LABOR & ECONOMIC AFFAIRS
EXHIBIT No. 6
DATE 1-18-07
BILL No. SB 153

Amendments to Senate Bill No. 153
1st Reading Copy

Requested by Senator Vicki Cocchiarella

For the Senate Business, Labor, and Economic Affairs Committee

Prepared by Pat Murdo
January 18, 2007 (8:40am)

1. Title, line 26.
Following: "FACILITIES;"
Insert: "PROVIDING ACUPUNCTURISTS WITH LIEN RIGHTS;"

2. Title, line 30.
Following: "37-73-208,"
Strike: remainder of line 30

3. Page 5, lines 4 through 5.
Strike: "or" on line 4 through "outpatient" on line 5
Insert: ", a"
Following: "diagnostic" on line 5
Strike: ","

4. Page 5, line 6.
Strike: "an"
Insert: "a diagnostic"

5. Page 6, line 28.
Strike: "45"
Insert: "46"

6. Page 34, line 30 through page 51, line 15.
Strike: sections 43 through 46 in their entirety
Renumber: subsequent sections

7. Page 52, line 3.
Following: "Therapist,"
Insert: "Acupuncturist,"

8. Page 52, line 8.
Following: the second "therapists,"
Insert: "acupuncturists,"

9. Page 52, line 28.
Following: the second **"therapists,"**
Insert: **"acupuncturists,"**

10. Page 53, line 2.
Following: the second "therapist,"
Insert: "acupuncturist,"

11. Page 53, line 9.
Following: the second "therapist,"
Insert: "acupuncturist,"

12. Page 53, line 19.
Following: the second "therapist,"
Insert: "acupuncturist,"

13. Page 53, line 26.
Following: the second "therapist,"
Insert: "acupuncturist,"

14. Page 54, line 4.
Following: the second "therapist,"
Insert: "acupuncturist,"

15. Page 54, line 9.
Following: the second "therapist,"
Insert: "acupuncturist,"

16. Page 54, line 18.
Following: the second "therapist,"
Insert: "acupuncturist,"

17. Page 54, line 21.
Following: "therapist,"
Insert: "acupuncturist,"

18. Page 54, line 27.
Following: "therapy,"
Insert: "acupuncture,"

19. Page 55, line 2.
Following: the second "therapist,"
Insert: "acupuncturist,"

- END -

montana *optometric* association
www.mteyes.com | e-mail: suew@mteyes.com | phone: 406.443.1160 | fax: 406.443.4614 | 36 S. Last Chance Gulch, Suite A, Helena, MT 59601

BUSINESS, LABOR & ECONOMIC AFFAIRS
EXHIBIT No. 7
DATE 1-18-07
BILL No. SB153

Senate Bill 153

Testimony of Montana Optometric Association Before the Senate Business, Labor and Economic Affairs Committee January 18, 2007

For the record, my name is Sue Weingartner, Executive Director of the Montana Optometric Association. We are in support of SB 153.

We would like to express our appreciation to the Department of Labor and its staff for the open and cooperative manner in which shareholders were informed and involved prior to this bill having been brought forward.

Optometrists and nurses both need the provisions in this bill that include optometrists in the list of health care providers that can prescribe patient orders to be administered by nursing staff. One example is the nursing home patients that receive medical eye care from an optometrist. The optometrist needs the authority to prescribe orders for nursing care for these patients, and nursing staff needs the authority to administer the optometrist's orders. This bill grants that authority.

We ask for your support of SB 153.

Sue Weingartner, Executive Director
Montana Optometric Association
36 South Last Chance Gulch, Suite A
Helena, MT 59601
406.443.1160
406.443.4614 fax
suew@mteyes.com

CARL THUESEN

GOLF COURSE ARCHITECTURE A S L A LANDSCAPE ARCHITECTURE

January 17, 2007

Senate Business, Labor & Economic Affairs Committee
FAX 444-4875
RE: SB 54 hearing 1/18/07

Dear Committee Members:

Please enter this letter as my testimony pertaining to the subject hearing.

I have been practicing landscape architecture in the private sector in Montana since 1973. Currently I am licensed in Montana, Wyoming and Idaho, and hold a nationally recognized Council of Landscape Architectural Review Boards (CLARB) certificate. I also currently serve on the Board of Landscape Architects, however the following comments are made as an individual.

I support SB 54 as drafted. Over the past two years the Board of Landscape Architects has taken significant action to reduce operating costs and to increase revenue in an effort to balance its' operating budget. Merger with the Board of Architects will complete this action plan, resulting in a financially stable combined Board.

In their meeting of January 10, 2006, the Board of Architects agreed to the merger proposal and creation of a combined Board with 3 architect members, 2 landscape architect members, and 1 public member. As presented at that meeting, separate fees would be maintained for each profession, enabling the landscape architect licensees to fully support the cost for two board members and associated administrative and other distributed costs.

It is important that a combined board have at least two landscape architect members so that continuity may be retained through the use of staggered appointments for those representatives. The purpose of the Board is not to represent the professions, but rather to represent and protect the people of Montana with respect to those professions. Two landscape architect members are needed on the Board to effectively accomplish this charge. The architects will not be affected in any way through this structure.

Wyoming has had a combined Board of Architects and Landscape Architects since enactment of licensing for landscape architects there in 1992. In my experience this combined Board functions very well. I believe a similarly structured Board can be equally effective in Montana.

Sincerely,

Carl A. Thuesen, ASLA
Landscape Architect

1925 GRAND AVE. SUITE 105 P.O. BOX 22943 BILLINGS, MT 59104 406/252-5545 FAX 406/245-9855

MINUTES

MONTANA SENATE
60th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS, LABOR, AND ECONOMIC AFFAIRS

Call to Order: By **CHAIRMAN VICKI COCCHIARELLA**, on February 1, 2007 at 9:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:
Sen. Vicki Cocchiarella, Chairman (D)
Sen. Joe Balyeat (R)
Sen. Roy Brown (R)
Sen. John Esp (R)
Sen. Verdell Jackson (R)
Sen. Lane L. Larson (D)
Sen. Don Ryan (D)
Sen. Frank Smith (D)
Sen. Carolyn Squires (D)
Sen. Donald J. Steinbeisser (R)
Sen. Joseph (Joe) Tropila (D)

Members Excused: None.

Members Absent: None.

Staff Present: Claudia Johnson, Committee Secretary
Pat Murdo, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:
Hearing & Date Posted: SB 276, 1/31/2007
Executive Action: SB 153, SB 165

00:00:00 Chairwoman Cocchiarella

HEARING ON SB 276

Opening Statement by Sponsor:

00:00:57 **SEN. DONALD STEINBEISSER (R), SD 19,** opened the hearing on **SB 276,** Permit funeral directors to sell certain life insurance policies.

EXHIBIT(bus22a01)

Proponents:

00:02:49 Scott Gilligan, Counsel for Funeral Directors' Association

EXHIBIT(bus22a02)

00:13:56 Teri Stevenson, Funeral Director

00:17:59 Julie Briggs, Licensed Mortician

00:23:03 Todd Stevenson, Funeral Director

00:25:37 Jason Thornock, Mortician/Funeral Director

00:29:02 Steve Yeakel, Executive Director, Funeral Directors' Association

Opponents:

00:34:08 Frank Cote, Speaking for Jacqueline Lenmark, American Life Insurers (ALI)

00:47:57 Don Allen, Association of Financial Advisors

00:53:27 Roger McGlenn, Executive Director, Montana Independent Insurance Association (MIIA)

00:55:44 Erin McGowan-Fincham, Montana State Auditor's Office (SAO)

Informational Testimony: None.

Questions from Committee Members and Responses:

00:58:42 Sen. Ryan to Frank Cote, ALI

01:06:34 Sen. Brown to Sen. Steinbeisser

01:08:30 Sen. Squires to Frank Cote, ALI

01:13:58 Sen. Tropila to Roger McGlenn, MIIA

01:15:18 Sen. Cocchiarella to Steve Yeakel, Funeral Directors' Association

01:16:05 Sen. Cocchiarella to Frank Cote, ALI

01:20:34 Sen. Cocchiarella to Carol Roy, State Auditors Office (SAO)

01:21:29 Sen. Cocchiarella to Steve Yeakel, Funeral Directors' Association

01:26:17 Sen. Cocchiarella to Scott Gilligan, Counsel for Funeral Directors' Association

01:27:27 Sen. Tropila to Carol Roy, SAO

Closing by Sponsor:

01:28:21 Sen. Steinbeisser

01:32:06 Sen. Cocchiarella

EXECUTIVE ACTION ON SB 153

01:32:16 Motion: SEN. LARSON moved that SB 153 BE TABLED.

01:35:41 Pat Murdo

EXHIBIT(bus22a03)

01:32:50 **Substitute Motion: SEN. TROPILA made a substitute motion that SB 153 DO PASS.**

Discussion:

01:32:57 Sen. Cocchiarella

01:34:28 **Motion/vote: SEN. COCCHIARELLA moved that AMENDMENT SB015302.APM BE ADOPTED. Motion carried by voice vote with Sen. Larson voting no.**

01:36:40 **Motion: SEN. COCCHIARELLA moved that AMENDMENT SB015303.APM BE ADOPTED.**

01:58:04 **Discussion:**

01:37:06 Sen. Cocchiarella

EXHIBIT(bus22a04)

01:38:53 Sen. Ryan to Sen. Cocchiarella

01:39:14 Sen. Balyeat to Sen. Cocchiarella

01:41:09 **Vote: Motion carried that AMENDMENT SB015303.APM BE ADOPTED. Motion carried unanimously by voice vote.**

EXHIBIT(bus22a05)

Discussion:

01:43:02 Sen. Balyeat to Sen. Cocchiarella

01:43:36 Sen. Squires

01:45:03 **Motion/Vote: SEN. TROPILA moved that SB 153 DO PASS AS AMENDED. Motion carried unanimously by voice vote.**

EXECUTIVE ACTION ON SB 165

01:45:19 Sen. Cocchiarella

01:45:27 **Motion: SEN. ESP moved that SB 165 DO PASS.**

Discussion:

01:46:16 **Motion: SEN. ESP moved that AMENDMENT SB016501.APM #2 and #3 BE ADOPTED.**

Discussion:

01:47:22 Sen. Steinbeisser

01:48:16 Sen. Brown to Sen. Esp

01:48:56 Sen. Cocchiarella

01:50:04 Sen. Squires to Sen. Cocchiarella

01:51:01 Sen. Esp

01:51:44 Sen. Squires

01:52:02 **Motion/Vote: SEN. ESP moved that AMENDMENT SB016501.APM #2 AND #3 BE ADOPTED. Motion carried 7-4 by voice vote with SEN. COCCHIARELLA, SEN. LARSON, SEN. SQUIRES and SEN. STEINBEISSER voting no.**

01:52:32 **Motion: SEN. ESP moved that SB016501.APM #1 BE ADOPTED.**

Discussion:

01:52:58 Sen. Balyeat to Sen. Esp

01:53:54 Sen. Smith

01:54:23 Sen. Steinbeisser

01:54:58 Sen. Balyeat

01:56:24 Sen. Brown

01:57:04 Sen. Esp

01:58:22 **Vote: Motion that AMENDMENT SB016501.APM #1 BE ADOPTED failed 4-7 by roll call vote with SEN. BALYEAT, SEN. BROWN, SEN. ESP, and SEN. JACKSON voting aye.**

01:59:15 **Motion/Vote: SEN. ESP moved that SB 165 DO PASS AS AMENDED. Motion carried 10-1 by voice vote with SEN. BALYEAT voting no.**

ADJOURNMENT

Adjournment: 11:10 A.M.

_____
SEN. VICKI COCCHIARELLA, Chairman

_____
CLAUDIA JOHNSON, Secretary

VC/cj

Additional Exhibits:

EXHIBIT(bus22aad.pdf)

BUSINESS, LABOR & ECONOMIC AFFAIRS
EXHIBIT No. 3
DATE 2-1-07
BILL No. SB 153

Amendments to Senate Bill No. 153
1st Reading Copy

Requested by Senator Vicki Cocchiarella

For the Senate Business, Labor, and Economic Affairs Committee

Prepared by Pat Murdo
January 18, 2007 (8:40am)

1. Title, line 26.
Following: "FACILITIES;"
Insert: "PROVIDING ACUPUNCTURISTS WITH LIEN RIGHTS;"

2. Title, line 30.
Following: "37-73-208,"
Strike: remainder of line 30

3. Page 5, lines 4 through 5.
Strike: "or" on line 4 through "outpatient" on line 5
Insert: ", a"
Following: "diagnostic" on line 5
Strike: ","

4. Page 5, line 6.
Strike: "an"
Insert: "a diagnostic"

5. Page 6, line 28.
Strike: "45"
Insert: "46"

6. Page 34, line 30 through page 51, line 15.
Strike: sections 43 through 46 in their entirety
Renumber: subsequent sections

7. Page 52, line 3.
Following: "Therapist,"
Insert: "Acupuncturist,"

8. Page 52, line 8.
Following: the second "therapists,"
Insert: "acupuncturists,"

9. Page 52, line 28.
Following: the second **"therapists,"**
Insert: **"acupuncturists,"**

10. Page 53, line 2.
Following: the second "therapist,"
Insert: "acupuncturist,"

11. Page 53, line 9.
Following: the second "therapist,"
Insert: "acupuncturist,"

12. Page 53, line 19.
Following: the second "therapist,"
Insert: "acupuncturist,"

13. Page 53, line 26.
Following: the second "therapist,"
Insert: "acupuncturist,"

14. Page 54, line 4.
Following: the second "therapist,"
Insert: "acupuncturist,"

15. Page 54, line 9.
Following: the second "therapist,"
Insert: "acupuncturist,"

16. Page 54, line 18.
Following: the second "therapist,"
Insert: "acupuncturist,"

17. Page 54, line 21.
Following: "therapist,"
Insert: "acupuncturist,"

18. Page 54, line 27.
Following: "therapy,"
Insert: "acupuncture,"

19. Page 55, line 2.
Following: the second "therapist,"
Insert: "acupuncturist,"

- END -

BUSINESS, LABOR & ECONOMIC AFFAIRS
EXHIBIT No. 4
DATE 2-1-07
BILL No. SB153

Amendments to Senate Bill No. 153
1st Reading Copy

Requested by Senator Vicki Cocchiarella

For the Senate Business, Labor, and Economic Affairs Committee

Prepared by Pat Murdo
February 1, 2007 (8:07am)

1. Page 25, line 28.
Following: "(11)"
Insert: "(a)"

2. Page 26.
Following: line 1
Insert: "(b) The term does not include a person whose primary business is that of a locksmith and who may also install closed circuit television cameras and battery-operated door devices."

3. Page 27, line 26.
Following: "(23)"
Insert: "(a)"

4. Page 27.
Following: line 28
Insert: "(b) The term does not include a person whose primary business is that of a locksmith and who may also install closed circuit television cameras and battery-operated door devices."

- END -

BUSINESS, LABOR & ECONOMIC AFFAIRS
EXHIBIT No. 5
DATE 2-1-07
BILL No. SB 153

SB 153
Senator Vicki Cocchiarella
AN ACT REVISING PROFESSIONAL AND OCCUPATIONAL LICENSING LAWS

This is a general revision bill, removing outdated references, addressing audit citations, and responding to issues from various licensing boards and programs of the Department.

The bill:

- Affects the 40 licensing boards and programs administratively attached to the Department of Labor and Industry (Section 7, page 6, line 16)
- Creates an emeritus status for architects (Section 1, page 2, line 6)
- Creates a retirement license for plumbers (Section 2, page 2, line 19)
- Revises the Board of Realty Regulation (Section 3, page 2, line 29)
- Revises and renames the Board of Private Security (Section 4, page 3, line 13 and Section 5, page 4, line 5; Section 29, page 25, line 1; Section 30, page 28, line 21; Section 31, page 28, line 28; Section 32, page 29, line 18; Section 33, page 30, line 8; Section 34, page 30, line 23; Section 35, page 32, line 2; Section 36, page 32, line 25; Section 37, page 32, line 29; Section 38, page 33, line 6; Section 39, page 33, line 17; Section 40, page 34, line 8; Section 41, page 34, line 13; Section 55, page 55, line 7)
- Amends and clarifies the definition of license (Section 9, page 8, line 17)
- Allows boards to require state, regional or national certification for license renewal (Section 8, page 7, line 8)
- Expands definition of unprofessional conduct for licensing programs (Section 11, page 10, line 2)
- Adds elevator contractors, mechanics and inspectors to those covered by unprofessional conduct (Section 10, page 9, line 9)
- Revises the name of ambulatory surgical facilities (Section 6, page 4, line 14; Section 43, page 34, line 30; Section 44, page 35, line 17; Section 45, page 36, line 5; Section 46, page 49, line 21; Section 47, page 51, line 17; Section 48, page 52, line 1; Section 49, page 52, line 6; Section 50, page 52, line 15; Section 51, page 52, line 27; Section 52, page 54, line 3; Section 53, page 54, line 15; Section 54, page 54, line 24)
- Adds naturopathic physician, physician assistant, and optometrist to definitions relating to nursing (Section 12, page 11, line 17)
- Removes the oath requirement on nursing applications (Section 13, page 13, line 4; Section 14, page 13, line 14)
- Removes age requirement and high school diploma for optometrists (Section 15, page 13, line 24)
- Clarifies the Department designs forms for the Board of Speech-Language Pathologists and Audiologists (Section 16, page 14, line 5)
- Clarifies trainee license terminates for hearing aid dispenser if examination is failed (Section 17, page 14, line 9)
- Changes the term "certificate of registration" to "license" for Board of Veterinary Medicine (Section 18, page 15, line 14)

- Removes redundant rulemaking authority for the Board of Alternative Health Care Practitioners in regards to military licensees (Section 19, page 15, line 19)
- Allows direct application and payment to the naturopathic testing agency (Section 20, page 16, line 6)
- Clarifies that respiratory care practitioners students may not receive compensation (Section 21, page 16, line 21)
- Revises fee distribution between the department and the department of fish wildlife and parks (Section 22, page 17, line 6)
- Clarifies conditions for denying, suspending or revoking an outfitter's, guide's or professional guide's license (Section 23, page 18, line 10)
- Requires the department to publish a pamphlet of Outfitter names and addresses (Section 24, page 19, line 2)
- Provides penalties for noncompliance by real estate brokers or property managers with trust account provisions (Section 25, page 19, line 9)
- Creates endorsement provisions for a supervising real estate broker (Section 26, page 19, line 30; Section 27, page 23, line 10; Section 28, page 23, line 22;)
- Creates a temporary license for elevator inspectors (Section 42, page 34, line 19)

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
60th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By Chairman Scott Mendenhall, on March 16, 2007 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Scott Mendenhall, Chairman (R)
Rep. Jim Keane, Vice Chairman (D)
Rep. Mike Milburn, Vice Chairman (R)
Rep. Elsie Arntzen (R)
Rep. Shannon Augare (D)
Rep. Scott Boggio (R)
Rep. Ernie Dutton (R)
Rep. Kevin T. Furey (D)
Rep. Ralph Heinert (R)
Rep. Llew Jones (R)
Rep. Harry Klock (R)
Rep. Michele Reinhart (D)
Rep. Wayne Stahl (R)
Rep. Bill Thomas (D)
Rep. Kendall Van Dyk (D)

Members Excused: Rep. Jonathan Windy Boy (D)

Members Absent: None

Staff Present: Bart Campbell, Legislative Branch
Nancy Kraft, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	SB 108, 3/9/2007; SB 153, 3/9/2007; SB 276, 3/9/2007; SB 319, 3/14/2007
Executive Action:	SB 116, SB 323

HEARING ON SB 276

Opening Statement by Sponsor:

00:02:55 Sen. Donald Steinbeisser (R), SD 19, opened the hearing on SB 276, Permit funeral directors to sell certain life insurance policies.

Proponents' Testimony:

00:05:22 Scott Gilligan, Montana Funeral Directors' Association
00:10:38 Teri Stevenson, Funeral Director from eastern Montana
00:11:39 Shane Salisbury, Montana Funeral Directors' Association
00:12:29 Wayne Benson, Missoula, Montana
00:13:30 Todd Stevenson
00:14:32 Steve Yeakel, Montana Funeral Directors' Association
EXHIBIT(buh56a01)

Opponents' Testimony:

00:16:56 Erin McGowan Fincham, State Auditor's Office
00:20:52 Don Allen, Association of Insurance and Financial Advisors
00:26:00 Jacqueline Lenmark, American Council of Life Insurers

Informational Testimony: None

Questions from Committee Members and Responses:

00:32:43 Rep. Furey
00:33:06 Ms. McGowan Fincham
00:33:22 Rep. Keane
00:33:40 Ms. McGowan Fincham
00:34:07 Mary Arnold, State Auditor's Office
00:35:52 Rep. Reinhart
00:36:29 Mr. Yeakel
00:36:45 Mr. Gilligan
00:41:28 Rep. Jones
00:41:55 Mr. Gilligan
00:43:31 Rep. Keane
00:43:56 Mr. Gilligan
00:44:49 Rep. Keane
00:45:04 Mr. Allen
00:45:40 Rep. Dutton
00:46:03 Mr. Gilligan
00:47:13 Rep. Mendenhall
00:47:51 Ms. McGowan Fincham
00:47:59 Jennifer Massman, State Auditor's Office

Closing by Sponsor:

00:49:09 Sen. Steinbeissr

HEARING ON SB 108

Opening Statement by Sponsor:

00:50:09 Sen. Vicki Cocchiarella (D), SD 47, opened the hearing on SB 108, Revise work comp laws-independent contractors-medical fees-impaired insurers-etc.
EXHIBIT(buh56a02)

Proponents' Testimony:

00:52:05 Jerry Keck, Department of Labor and Industry
00:56:50 Jason Miller, Montana State AFL-CIO
00:57:17 Larry Kibbee, Property Casualty Insurance Association of America
00:57:47 Riley Johnson, National Federation of Independent Business
00:58:02 Jon Bennion, Montana Chamber of Commerce
00:58:34 Jason Todhunter, Montana Logging Association
00:58:47 Shawn Bubb, Montana School Group Insurance Authority
00:58:59 Nancy Butler, Montana State Fund
00:59:14 George Wood, Montana Self Insurers' Association
00:59:56 Jacqueline Lenmark, American Insurance Association
01:00:33 Andrea Olsen, Montana Trial Lawyers' Association
01:01:32 Bob Olsen, Association of Montana Health Care Providers

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

01:03:12 Sen. Cocchiarella

HEARING ON SB 153

Opening Statement by Sponsor:

01:03:34 Sen. Vicki Cocchiarella (D), SD 47, opened the hearing on SB 153, Revise professional and occupational licensing laws.
EXHIBIT(buh56a03)

Proponents' Testimony:

01:05:57 Jack Kane, Department of Labor and Industry
01:12:29 Glenn Oppel, Montana Association of Realtors

Opponents' Testimony: None

Informational Testimony:

01:13:03 Roy Kemp, Department of Public Health and Human Services

Questions from Committee Members and Responses:

01:13:25 Rep. Dutton
01:13:48 Mr. Oppel
01:16:15 Rep. Arntzen
01:17:05 Mr. Kemp
01:17:30 Jill Caldwell, Department of Labor and Industry
01:19:40 Rep. Mendenhall
01:20:00 Mr. Kemp
01:22:05 Rep. Mendenhall
01:22:38 Lisa Addington, Department of Labor and Industry
01:24:59 Rep. Mendenhall

Closing by Sponsor:

01:25:15 Sen. Cocchiarella

HEARING ON SB 319

Opening Statement by Sponsor:

01:25:56 Sen. Vicki Cocchiarella (D), SD 47, opened the hearing on SB 319, Allow real estate agent to represent multiple sellers or buyers.

Proponents' Testimony:

01:26:51 Glenn Oppel, Montana Association of Realtors
01:28:24 Jamie Bowditch, Montana Association of Realtors' General Counsel
EXHIBIT(buh56a04)
01:31:47 Vickie Hammond, Real Estate Broker, Missoula, Montana
EXHIBIT(buh56a05)

Opponents' Testimony:

01:35:06 Andrea Olsen, Montana Trial Lawyers' Association

Informational Testimony: None

Questions from Committee Members and Responses:

01:42:11 Rep. Dutton
01:44:54 Ms. Olsen
01:48:32 Rep. Keane
01:48:49 Mr. Bowditch
01:50:03 Rep. Jones
01:51:04 Mr. Bowditch
01:52:38 Rep. Reinhart
01:52:54 Mr. Bowditch
01:54:35 Rep. Furey
01:55:19 Mr. Bowditch
01:57:47 Rep. Dutton
01:58:24 Mr. Bowditch
01:58:32 Rep. Arntzen
01:58:57 Mr. Bowditch

Closing by Sponsor:

01:59:40 Sen. Cocchiarella

02:02:51 Break

EXECUTIVE ACTION ON SB 323

02:32:59 **Motion**: Rep. Milburn moved that SB 323 **BE CONCURRED IN.**

Discussion:

02:33:20 Rep. Milburn
02:33:57 Rep. Keane

02:34:09 **Motion**: Rep. Dutton moved that SB 323 **BE AMENDED.** **EXHIBIT(buh56a06)**

Discussion:

02:35:42 Rep. Jones
02:36:59 Rep. Keane
02:37:10 Rep. Mendenhall
02:38:34 Rep. Augare

02:40:21 **Vote**: Motion failed 3-13 by roll call vote with Reps. Dutton, Rep. Furey, and Mendenhall voting aye. Reps. Windy Boy and Arntzen voted by proxy.
02:41:51 **Vote**: Motion carried 14-2 by roll call vote with Reps. Arntzen and Rep. Windy Boy voting no. Reps. Windy Boy and Arntzen voted by proxy. Rep. Llew Jones will carry the bill.

EXECUTIVE ACTION ON SB 116

02:42:03 **Motion**: Rep. Keane moved that SB 116 **BE CONCURRED IN.**
02:42:39 **Motion**: Rep. Stahl moved that SB 116 **BE AMENDED.**
EXHIBIT(buh56a07)

Discussion:

02:44:04 Rep. Furey
02:44:49 Rep. Keane

02:44:57 **Vote**: Motion carried unanimously by voice vote.
02:45:19 **Motion**: Rep. Stahl moved that SB 116 **BE AMENDED.**
EXHIBIT(buh56a08)

Discussion:

02:46:12 Rep. Augare
02:47:12 Rep. Milburn
02:48:16 Rep. Keane
02:48:27 Rep. VanDyk

02:49:13 **Vote**: Motion failed 8-8 by roll call vote with Reps. Arntzen, Boggio, Dutton, Heinert, Jones, Mendenhall, Milburn, and Stahl voting aye. Reps. Windy Boy and Arntzen voted by proxy.
02:50:09 **Motion/Vote**: Rep. Milburn moved that SB 116 **BE CONCURRED IN AS AMENDED.** Motion carried unanimously by voice vote. Reps. Windy Boy and Arntzen voted by proxy. Rep. Keane will carry the bill.

ADJOURNMENT

02:50:58 Adjournment: 9:50 A.M.

_____
REP. SCOTT MENDENHALL, Chairman

_____
NANCY KRAFT, Secretary

SM/nk

Additional Exhibits:

EXHIBIT(buh56aad.pdf)

EXHIBIT 3
DATE 3-17-07
SB 153

SB 153
Senator Vicki Cocchiarella
AN ACT REVISING PROFESSIONAL AND OCCUPATIONAL LICENSING LAWS

This is a general revision bill, removing outdated references, addressing audit citations, and responding to issues from various licensing boards and programs of the Department.

The bill:

- Affects the 40 licensing boards and programs administratively attached to the Department of Labor and Industry.
- Creates an emeritus status for architects
- Creates a retirement license for plumbers
- Revises the Board of Realty Regulation
- Revises and renames the Board of Private Security
- Amends and clarifies the definition of license
- Allows boards to require state, regional or national certification for license renewal
- Expands definition of unprofessional conduct for licensing programs
- Adds elevator contractors, mechanics and inspectors to those covered by unprofessional conduct
- Revises the name of ambulatory surgical facilities
- Adds naturopathic physician, physician assistant, and optometrist to definitions relating to nursing
- Removes the oath requirement on nursing applications
- Removes age requirement and high school diploma for optometrists
- Clarifies the Department designs forms for the Board of Speech-Language Pathologists and Audiologists
- Clarifies trainee license terminates for hearing aid dispenser if examination is failed
- Changes the term "certificate of registration" to "license" for Board of Veterinary Medicine
- Removes redundant rulemaking authority for the Board of Alternative Health Care Practitioners in regards to military licensees
- Allows direct application and payment to the naturopathic testing agency
- Clarifies that respiratory care practitioners students may not receive compensation
- Revises fee distribution between the department and the department of fish wildlife and parks
- Clarifies conditions for denying, suspending or revoking an outfitter's, guide's or professional guide's license
- Requires the department to publish a pamphlet of Outfitter names and addresses
- Provides penalties for noncompliance by real estate brokers or property managers with trust account provisions
- Creates endorsement provisions for a supervising real estate broker
- Creates a temporary license for elevator inspectors

Jane Lee Hamman
P. O. Box 164
Clancy, MT 59634-0164
406/933-8203
406/465-4011 (cell)
Janeleehamman@aol.com

March 15, 2007

Representative Scott Mendenhall, H. D. 77
House of Representatives Seat 51
Chairman, House Business and Labor Committee
Helena, MT 59620

RE: SB 153 Hearing, Friday March 16 ~ Proponent

Mr. Chairman and members of the House Business and Labor Committee. Regretfully, I am in Billings on business today, so my testimony on SB 153 is being submitted only in writing. The Montana Association of Acupuncture and Oriental Medicine, with whom I am working this session, is supporting passage and approval of SB 153.

In addition to generally revising the professional and occupational boards, this bill adds acupuncturists under the Montana Lien Act with other health professionals, generally in Sections 44 through 50. The Montana Association of Acupuncture and Oriental Medicine (MAAOM) has 142 active licensed members in the state. Based on the scope of their practices and referrals, an informal survey by the association shows that about 60% or 85 licensed members will from time-to-time use these lien rights. Neither Jeannie Worsech, Executive Director of the Board of Medical Examiners, nor Lisa Addington, Health Care Licensing Bureau Chief, know of any opposition to inclusion of acupuncturists in the lien rights.

MAAOM is under the State Board of Medical Examiners, not operating a separate board for licensing purposes, but electing officers of their association. This relationship has been positive and cost-effective. Mrs. Tanja Brekke of Bozeman is MAAOM President.

Since 1991, acupuncturists have been Master's Degree level professionals, with all members having continuing education standards and many having additional higher education as well. The Accreditation Commission for Acupuncture and Oriental Medicine was recognized by the U.S. Department of Education as a "specialized and professional" accrediting agency in 1988.

MAAOM commends Legislators and staff who worked on the SJR 35 Interim Committee and staff of the Department of Labor and Industry for their dedicated work. MAAOM especially thanks Senator Cocchiarella for sponsoring all three of the bills that evolved out of the interim study of professional and occupational licensing.

We would appreciate your support of SB 153. If you have any follow-up questions, I will be available Monday, March 19. Thank you.

Sincerely,

Jane Lee Hamman

Jane Lee Hamman
MAAOM Lobbyist

C: Senator Vicki Cocchiarella
Lisa Addington, Health Care Licensing Bureau Chief

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
60th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By Chairman Scott Mendenhall, on March 28, 2007 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:
Rep. Scott Mendenhall, Chairman (R)
Rep. Jim Keane, Vice Chairman (D)
Rep. Mike Milburn, Vice Chairman (R)
Rep. Elsie Arntzen (R)
Rep. Shannon Augare (D)
Rep. Scott Boggio (R)
Rep. Ernie Dutton (R)
Rep. Kevin T. Furey (D)
Rep. Harry Klock (R)
Rep. Michele Reinhart (D)
Rep. Bill Thomas (D)
Rep. Jonathan Windy Boy (D)

Members Excused: Rep. Ralph Heinert (R)
Rep. Llew Jones (R)
Rep. Wayne Stahl (R)
Rep. Kendall Van Dyk (D)

Members Absent: None

Staff Present: Bart Campbell, Legislative Branch
Nancy Kraft, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	SB 440, 3/19/2007; SB 453, 3/19/2007
Executive Action:	SB 453; SB 440; SB 92; SB 165; SB 153

HEARING ON SB 453

Opening Statement by Sponsor:

00:01:49 Sen. Jeff Essmann (R), SD 28, opened the hearing on SB 453, Require licensing boards to provide public information with respect to disciplinary actions.

Proponents' Testimony:

00:07:50 John Barrows, Montana Newspaper Association
00:08:59 Ann Brodsky, Legal Counsel, Governor's Office
00:09:56 Keith Allen, International Brotherhood of Electrical Workers #233

Opponents' Testimony: None

Informational Testimony:

00:10:26 Gene Allison, Business Standards Division, Department of Labor and Industry

Questions from Committee Members and Responses:

00:10:57 Rep. Boggio
00:11:55 Sen. Essmann
00:12:32 Rep. Mendenhall
00:13:24 Sen. Essmann
00:14:11 Rep. Keane
00:14:33 Mr. Allison

Closing by Sponsor:

00:15:13 Sen. Essmann

HEARING ON SB 440

Opening Statement by Sponsor:

00:16:38 Sen. Joseph (Joe) Tropila (D), SD 13, opened the hearing on SB 440, Revise membership of workforce investment boards--add military veteran.

Proponents' Testimony:

00:17:38 Retired Colonel Jim Jacobsen, Montana American Legion

Opponents' Testimony: None

Informational Testimony:

00:19:03 Leisa Smith, State Workforce Investment Board

Questions from Committee Members and Responses:

00:19:33 Rep. Thomas
00:19:48 Sen. Tropila
00:20:42 Rep. Dutton
00:20:48 Sen. Tropila
00:21:03 Rep. Mendenhall
00:21:45 Sen. Essman
00:22:03 Rep. Mendenhall
00:22:15 Ms. Smith

Closing by Sponsor:

00:24:02 Sen. Tropila

EXECUTIVE ACTION ON SB 453

00:26:00 **Motion/Vote**: Rep. Keane moved that SB 453 **BE CONCURRED IN**. Motion carried unanimously by voice vote. Reps. Windy Boy, Van Dyk, Stahl, Arntzen, Heinert, and Jones voted by proxy. Rep. Keane will carry the bill.

EXECUTIVE ACTION ON SB 440

00:27:47 **Motion**: Rep. Milburn moved that SB 440 **BE CONCURRED IN.**

Discussion:

00:28:38 Rep. Dutton
00:28:54 Rep. Keane
00:29:39 Rep. Furey
00:29:50 Rep. Mendenhall

00:30:37 **Vote**: Motion carried unanimously by voice vote. Reps. Windy Boy, Van Dyk, Stahl, Arntzen, Heinert, and Jones voted by proxy. Rep. Thomas will carry the bill.

EXECUTIVE ACTION ON SB 92

00:35:33 **Motion**: Rep. Milburn moved that SB 92 **BE CONCURRED IN.**
00:36:04 **Motion**: Rep. Milburn moved that SB 92 **BE AMENDED.**
EXHIBIT(buh66a01)

Discussion:

00:36:30 Bart Campbell
00:38:50 Rep. Milburn
00:40:09 Rep. Dutton
00:40:34 Mr. Campbell
00:40:46 Rep. Dutton
00:40:50 Rep. Reinhart

00:41:10 **Vote**: Motion carried unanimously by voice vote. Reps. Windy Boy, Van Dyk, Stahl, Arntzen, Heinert, and Jones voted by proxy.
00:41:35 **Motion/Vote**: Rep. Milburn moved that SB 92 **BE CONCURRED IN AS AMENDED**. Motion carried unanimously by voice vote. Reps. Windy Boy, Van Dyk, Stahl, Arntzen, Heinert, and Jones voted by proxy. Rep. McNutt will carry the bill.

EXECUTIVE ACTION ON SB 165

00:42:18 **Motion**: Rep. Milburn moved that SB 165 **BE CONCURRED IN.**
00:42:43 **Motion**: Rep. Milburn moved that SB 165 **BE AMENDED.**
EXHIBIT(buh66a02)

Discussion:

00:42:50 Mr. Campbell
00:44:25 Rep. Milburn

00:44:39 **Vote**: Motion carried unanimously by voice vote. Reps. Windy Boy, Van Dyk, Stahl, Arntzen, Heinert, and Jones voted by proxy.
00:45:06 **Motion**: Rep. Milburn moved that SB 165 **BE CONCURRED IN AS AMENDED.**

Discussion:

00:45:11 Rep. Dutton
00:47:05 Rep. Augare
00:47:55 Rep. Keane
00:49:03 Rep. Mendenhall
00:51:03 Rep. Milburn

00:51:33 **Vote**: Motion carried unanimously by voice vote. Reps. Windy Boy, Van Dyk, Stahl, Arntzen, Heinert, and Jones voted by proxy. Rep. Milburn will carry the bill.

EXECUTIVE ACTION ON SB 153

00:54:17 **Motion**: Rep. Milburn moved that SB 153 **BE CONCURRED IN.**

Discussion:

00:54:26 Bart Campbell

00:55:06 **Motion**: Rep. Dutton moved that SB 153 **BE AMENDED.** **EXHIBIT(buh66a03)**

Discussion:

00:56:22 Rep. Furey
00:56:57 Rep. Dutton
00:57:36 Rep. Keane
00:57:56 Rep. Dutton
00:58:25 Rep. Keane
00:58:47 Mr. Campbell

00:59:21 **Vote**: Motion carried unanimously by voice vote.
00:59:48 **Motion**: Rep. Milburn moved that SB 153 **BE CONCURRED IN AS AMENDED.**

Discussion:

01:00:33 Rep. Mendenhall
01:00:51 Rep. Furey
01:01:04 Rep. Keane

01:01:16 **Vote**: Motion carried unanimously by voice vote. Reps. Windy Boy, Van Dyk, Stahl, Arntzen, Heinert, and Jones voted by proxy. Rep. Milburn will carry the bill.

ADJOURNMENT

01:01:57 Adjournment: 9:15 A.M.

_____
REP. SCOTT MENDENHALL, Chairman

_____
NANCY KRAFT, Secretary

SM/nk

Additional Exhibits:

EXHIBIT(buh66aad.pdf)

EXHIBIT 3
DATE 3-28-07
SB 153

Amendments to Senate Bill No. 153
3rd Reading Copy

Requested by Representative Ernie Dutton

For the House Business and Labor Committee

Prepared by Bartley Campbell
March 27, 2007 (2:05pm)

1. Page 24, line 28.
Following: "(6)"
Insert: "(a)"

2. Page 24, line 29.
Strike: "."
Insert: "except that:

(i) any broker licensed prior to October 1, 2007, is entitled to a supervising broker endorsement provided that the broker indicates on the broker's license renewal form for the 2008 calendar year the broker's intention to obtain the endorsement;

(ii) a broker who obtains a supervising broker endorsement pursuant to subsection (6)(a)(i) is subject to the endorsement renewal requirements adopted by the board by rule in order to supervise one or more licensed salespersons;

(iii) continuing education requirements for a supervising broker endorsement may not be in addition to the continuing education requirements for a licensed broker with respect to the total number of hours or credits required.

(b) The board may not assess a licensing fee for obtaining or renewing a supervising broker endorsement."

- END -